Supreme Court, U.S.
FILED
MAY 10 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-777

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COUFT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 28, 1975
CERTIORARI GRANTED FEBRUARY 23, 1976

Supreme Court of the United States

OCTOBER TERM, 1975

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NATIONAL LABOR RELATIONS BOARD,
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—v.—

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Docket Entry
10/6/72	Charge Filed, NLRB Case No. 29-CC-336
10/26/72	Complaint and Notice of Hearing issued
10/31/72	Order Rescheduling Hearing issued
11/2/72	Hearing in Section 10(1) Proceeding, Case No. 72-Civil-1339
11/9/72	Respondent Union's Answer in NLRB Case No. 29-CC-336
11/15/72	Hearing opened in NLRB Case No. 29-CC-336
11/15/72	Hearing closed in NLRB Case No. 29-CC-336
3/30/72	Administrative Law Judge's Decision issued
4/11/72	Respondent Union's Exceptions to the Decision of the Administrative Law Judge, received
4/12/73	General Counsel's Exceptions to the Administrative Law Judge's Decision, received
7/5/73	Decision and order issued by the National Labor Relations Board, dated
8/30/73	Order Correcting Decision and Order, dated
7/1/75	Decision of Court of Appeals
7/1/75	Judgment of Court of Appeals
2/23/76	Order of Supreme Court granting certiorari

FORM NLRB 508 (12-65)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE

Case No.: 29-CC-336

Date Filed: 10-6-72

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor Organization or its Agents against which charge is brought
   a. Name: Enterprise Association, Steam Fitters, Local No. 638, U.A., AFL-CIO
   b. Union Representative to Contact: William B. Daley
   c. Phone No.: 674-3937
   d. Address (Street, city, State and ZIP code): 841 Broadway, New York, New York
   e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 4(i)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about August 7, 1972, the above designated labor organization, by its officers, agents and/or officials has engaged in, or induced or encouraged individuals employed by The Austin Company, Inc. Hudik-Ross, Inc. and other persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services and/or has threatened, coerced or restrained The Austin Company, Inc. Hudik-Ross, Inc. and other persons engaged in commerce or an industry affecting commerce, where in either case an object thereof is forcing or requiring the Austin Company, Inc. and Hudik-Ross, Inc. to cease using, selling, handling, transporting or otherwise dealing in the products of Slant/Fin Corporation, or to cease doing business with Slant/Fin Corporation.

3. Name of Employer: The Austin Company, Inc.
4. Location of Plant Involved (Street, city, State and ZIP code): 450 West 1st Avenue, Roselle, New Jersey 07203
5. Type of Establishment (Factory, mine, wholesaler, etc.): General Contractor
6. Identify Principal Product or Service:
7. No. of Workers Employed: 300
8. Full Name of Party Filing Charge: The Austin Company, Inc.
9. Address of Party Filing Charge (Street, city, State and ZIP code): 450 West 1st Ave., Roselle, New Jersey 07203
10. Telephone No.: 201-245-4000

11. Declaration:
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ (illegible)
(Signature of representative or person making charge)

District Superintendent
(Title or office, if any)

Address 450 West 1st Ave., Roselle, N.J. 07203

(Telephone number): 201-345-4000

(Date): October 6, 1972

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 1001)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CC-336

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

and

THE AUSTIN COMPANY, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by The Austin Company, Inc., herein called Austin, that Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine and General Pipefitters of New York and Vicinity, Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Austin on October 6, 1972, and served by registered mail upon Respondent on or about October 6, 1972.

2. (a) Slant/Fin Corporation, herein called Slant/Fin, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Slant/Fin has maintained its principal office and place of business at 100 Forest Drive at East Hills in the Town of Greenvale, State of New York, where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of heating, ventilating and air-conditioning units, and related products.

(c) During the past year, which period is representative of its annual operations generally, Slant/Fin, in the course and conduct of its business operations, manufactured, sold and distributed at its place of business, products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from said place of business in interstate commerce directly to states of the United States other than the state in which it is located.

(d) Slant/Fin is, and has been at all times material herein, a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7), and 8(b)(4) of the Act.

3. (a) Austin is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Ohio.

(b) At all times material herein, Austin has maintained its principal office and place of business at 450 West First Avenue, in the City of Roselle, State of New Jersey. It is, and has been at all times material herein, engaged in the business of providing and performing engineering and general contracting services and related services at various building and construction jobsites in various states of the United States, including the states of New Jersey and New York.

(c) During the past year, which period is representative of its annual operations generally, Austin, in the course and conduct of its business, purchased and caused to be transported and delivered, *inter alia*, to its place of business, in Roselle, New Jersey, and to various

building and construction jobsites in the State of New York, building supplies and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business and to said jobsites in interstate commerce directly from states of the United States other than the states in which said place of business and jobsites are located.

(d) Austin is, and has been at all times material herein, a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7) and 8(b)(4) of the Act.

4. (a) Hudik-Ross Co., Inc., herein called Hudik-Ross, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Hudik-Ross has maintained its principal office and place of business at 251 West 42nd Street, in the City of New York, State of New York. It is, and has been at all times material herein, engaged in the business of providing and performing heat, ventilation and air-conditioning contracting services and related services at various building and construction jobsites in the State of New York.

(c) During the past year, which period is representative of its annual operations generally, Hudik-Ross, in the course and conduct of its business, purchased and caused to be transported and delivered to its place of business, and to various building and construction jobsites in New York State, heating, ventilating and air conditioning supplies, and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to said place of business and to said jobsites in interstate commerce directly from states of the United States other than the state in which said place of business and jobsites are located.

(d) Hudick-Ross is, and has been at all times material herein, a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7) and 8(b)(4) of the Act.

5. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6. William Daley is, and has been at all times material herein, the business agent of Respondent, acting on its behalf, and as agent thereof.

7. (a) At all times material herein, Austin has been the engineer and general contractor for the construction of the Norwegian Home for the Aged located at 1250 67th Street, Brooklyn, New York, herein called the Norwegian Home jobsite.

(b) At all times material herein, Austin, in its capacity of engineer, prepared the engineering job specifications for the construction of the Norwegian Home. The said job specifications, prepared by Austin, require the installation of heating and air-conditioning units at the Norwegian Home jobsite known as climate command units, which units are manufactured by Slant/Fin. Said job specifications further require that the main water flow and condensate assembly for the above mentioned units shall be factory installed as an integral part of said units manufactured by Slant/Fin.

(c) Pursuant to an agreement with Slant/Fin, and in accordance with the Norwegian Home job specifications described in subparagraph (b) above, Austin has, at all times material herein, purchased from Slant/Fin and caused to be delivered to the Norwegian Home jobsite, climate command heating and air-conditioning units to be installed at said Norwegian Home jobsite.

8. In or around April 1972, Austin subcontracted to Hudik-Ross the heating, ventilation and air-conditioning work to be performed at the Norwegian Home jobsite, including the installation of the climate command heating and air-conditioning units with factory installed main water flow and condensate assemblies, manufactured by Slant/Fin.

9. At all times material herein, Hudik-Ross and Respondent have been parties to a collective bargaining agreement covering employees of Hudik-Ross and Hudik-Ross has employed individuals at its various building and construction jobsites, including the Norwegian Home

jobsite, who are members of, or are represented by, Respondent.

10. At no time material herein have Slant/Fin and Respondent been parties to a collective bargaining agreement and the employees of Slant/Fin are not members of, or represented by, Respondent.

11. At all times material herein, Respondent has been engaged in a labor dispute with Slant/Fin because Slant/Fin is not a party to a collective bargaining agreement with Respondent and does not employ individuals who are members of, or represented by, Respondent, and because the main water flow and condensate assemblies for the command control heating and air-conditioning units manufactured by Slant/Fin for Austin, to be installed at the Norwegian Home jobsite, have been factory installed by employees of Slant/Fin who are not members of, or represented by, Respondent, and have not been installed at said jobsite by employees of Hudik-Ross, who are members of, or represented by, Respondent.

12. (a) On or about June 22, 1972, and on various other dates presently unknown during the months of July, August and September 1972, Respondent, by William Daley, its business agent at the Norwegian Home jobsite, in furtherance of its dispute with Slant/Fin, as described above in paragraph 11, threatened Austin that it would refuse to permit its members employed by Hudik-Ross at the Norwegian Home jobsite, to handle, work on or install the climate command heating and air-conditioning units manufactured by Slant/Fin and scheduled to be installed at the Norwegian Home jobsite.

(b) On or about September 21, 1972, and on various other dates presently unknown during the months of September and October 1972, Respondent, by William Daley, its business agent, in furtherance of its dispute with Slant/Fin, as described above in paragraph 11, threatened Hudik-Ross that it would refuse to permit its members employed by Hudik-Ross at the Norwegian Home jobsite, to handle, work on or install the climate command heating and air conditioning units manufactured by Slant/Fin and scheduled to be installed at the Norwegian Home jobsite.

13. Since on or about September 15, 1972, Respondent, in furtherance of its dispute with Slant/Fin as described above in paragraph 11, has engaged in a strike among individuals employed by Hudik-Ross at the Norwegian Home jobsite, and has caused such individuals employed by Hudik-Ross at the Norwegian Home jobsite to refuse to work on, install, or otherwise handle the climate command heating and air-conditioning units manufactured by Slant/Fin and scheduled to be installed at the Norwegian Home jobsite.

14. Since on or about September 15, 1972, Respondent has engaged in a strike, as described above in paragraph 13, and by such conduct and by other means including requests, appeals, orders and instructions, Respondent induced and encouraged individuals employed by Hudik-Ross, and other persons engaged in commerce and in industries affecting commerce, to engage in a strike and a refusal in the course of their employment to use, manufacture, process, transport and otherwise handle and work on goods, articles, materials and commodities, and to perform services for their respective employers.

15. By the conduct described above in paragraphs 12, 13 and 14, Respondent threatened, coerced and restrained Hudik-Ross, Austin, and other persons engaged in commerce and in industries affecting commerce.

16. Respondent engaged in the conduct described above in paragraphs 12 through 15, in furtherance of its dispute with Slant/Fin, as described above in paragraph 11, and with an object or objects: (a) to force and require Hudik-Ross, and other persons, to cease using, handling, transporting, and otherwise dealing in climate command heating and air-conditioning units with factory installed main water flow and condensate assemblies or other related units or products manufactured by Slant/Fin, notwithstanding that Hudik-Ross was required to install said climate command heating and air-conditioning units at the Norwegian Home jobsite pursuant to the terms of its contract with Austin, as described above in paragraph 8; (b) to force and require Hudik-Ross and other persons, to cease doing business with Austin, Slant/Fin and other persons; and (c) to force and require Austin and

other persons to cease using, handling, transporting or otherwise dealing in the products of Slant/Fin, and other producers or manufacturers, and to cease doing business with Slant/Fin and other persons.

17. By the acts described above in paragraphs 12 through 15, and by each of said acts, for the objects described above in paragraph 16, Respondent engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

18. The acts of Respondent described above in paragraphs 12 through 16, occurring in connection with the operations of Slant/Fin, Austin and Hudik-Ross, described above in paragraphs 2, 3 and 4, respectively, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lend to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 8th day of November, 1972 at 11:00 a.m. at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the Natioinal Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board.

Dated at Brooklyn, New York, this 26th day of October, 1972.

/s/ Samuel M. Kaynard
SAMUEL M. KAYNARD
Regional Director, Region 29
National Labor Relations Board
16 Court Street, Brooklyn, New York 11241

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 29-CC-336

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

and

THE AUSTIN COMPANY, INC.

ANSWER

ENTERPRISE ASSOCIATION, etc., the Respondent herein, answers the Complaint in the within case as follows:

1. Admits the allegations contained in paragraphs 1, 2(a), 2(b), 2(c), 2(d), 3(a), 3(b), 3(c), 3(d), 4(a), 4(b), 4(c), 4(d), 5, 6, 7(a), 9 and 10 of the Complaint.

2. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7(b), 7(c) and 8 of the Complaint.

3. Denies the allegations contained in paragraphs 11, 12(a), 12(b), 13, 14, 15, 16, 17 and 18 of the Complaint.

Dated: New York, N. Y.
November 9, 1972.

DELSON & GORDON
By /s/ Ernest Fleischman
ERNEST FLEISCHMAN
Attorneys for Respondent Union
230 Park Avenue
New York, N. Y. 10017

TO:

Samuel M. Kaynard, Esq.
Regional Director
Region 29
National Labor Relations Board
16 Court Street
Brooklyn, N. Y.

The Austin Company, Inc.
450 West First Avenue
City of Roselle
New Jersev

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Second Region

Case No. 29-CC-336

In the Matter of:

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

AND

THE AUSTIN COMPANY, INC., Charging Party.

16 Court Street
Brooklyn, New York
November 15, 1972

BEFORE:

RAMEY DONOVAN, Administrative Law Judge

Appearances:

HOWARD EDELMAN, ESQ.
Counsel for the General Counsel

DELSON & GORDON, ESQS.
230 Park Avenue
New York, New York
Appearing on behalf of the Respondent

BY: ERNEST FLEISCHMAN, ESQ., of Counsel

[3] PROCEEDINGS

JUDGE DONOVAN: The hearing will be in order.

This is a formal hearing in the matter of the Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine and General Pipefitters of New York and vicinity, Local Union Number 638 of the United Association of the Plumbing & Pipefitting Industry of the United States and Canada, AFL-CIO, and the Austin Company, Inc., Case No. 29-CC-0336.

* * * *

Mr. Edelman, you may proceed.

MR. EDELMAN: Your Honor, this matter was tried in a 10L proceeding before Judge Bruchhausen on November 2, 1972.

The facts brought out in the trial of that case [4] would be the facts that would be brought out in the trial of this complaint.

There were no issues of credibility with respect to the 10L proceeding, and there are no issues of credibility with respect to this case.

The facts really are not in dispute.

That being the case, your Honor, General Counsel would like to propose that the record in the 10L proceeding constitute the record in this proceeding, and that would include—well, the record is from page 1 to page 142.

The particular case is Kaynard versus Enterprise, Local 638, 72 Civil 1339.

The exhibits in connection with that case would be part of the record.

Those exhibits would be Petitioner's Exhibits 1 through 11 and Respondent's Exhibit B.

* * * *

[7] JUDGE DONOVAN: Now, Mr. Fleischman, do you join in the proposed stipulation of Mr. Edelman with respect to Exhibit 2, the transcript in the District Court proceeding as constituting the record in this case?

MR. FLEISCHMAN: I do.

JUDGE DONOVAN: All right.

I'll receive General Counsel's Exhibit 2 into evidence, which includes the transcript of testimony and the exhibits referred to therein.

(Document referred to marked General Counsel's Exhibit 2 in evidence.)

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

72-C-1339

SAMUEL KAYNARD, REGIONAL DIRECTOR OF REGION 29 OF THE NATIONAL LABOR RELATIONS BOARD, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, PETITIONER,

—against—

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, RESPONDENT.

United States Courthouse
Brooklyn, New York

November 2, 1972
10:30 o'clock A.M.

Before:

HONORABLE WALTER BRUCHHAUSEN,
U.S.D.J.

EMANUEL KARR
Official Court Reporter

[2] Appearances:

NATIONAL LABOR RELATIONS BOARD,
Attorney for Petitioner

BY: HOWARD EDELMAN, ESQ., of Counsel.

MESSRS. DELSON & GORDON,
Attorneys for Local 638

BY: ERNEST FLEISHMAN, ESQ., of Counsel.

* * * *

[26] MR. EDELMAN: Your Honor, the petitioner will call as its first witness Robert Grand.

ROBERT S. GRAND, called as a witness on behalf of the petitioner, having been duly sworn by His Honor, Judge Bruchhausen, testified as follows:

Direct examination by Mr. Edelman:

Q Mr. Grand, are you employed by The Austin Company?
A Yes I am.
Q What is your position?
A District superintendent.
Q How long have you been employed by Austin?
A Going on thirty-nine years.
Q How long have you held the position of District superintendent?
A Going on twenty-eight years.
Q Will you describe for us your job, which would include the duties that you carry out.
[27] A Yes.

I plan the project, I schedule the project, I assign the Austin key personnel to the project, I remove them from the project at the proper times; I visit the project on a regular basis, discussing with the superintendent regarding the problems that come up regarding the progress of the work, I conduct and arrange for meetings between Austin personnel and subcontractors on the project in order to tie in the work of the various people.

THE COURT: Let me just come back a ways.

What position is Austin in, what do they do?

MR. EDELMAN: They are the general contractors, they are building it and they are also the engineer, they design it.

THE COURT: I see.

A (continuing) And finally I see to it that the job is properly completed and turned over to the union.

Q In your capacity as district manager or district superintendent, do you supervise more than one project at a time?

A Yes I do.

Q Have you been supervising, among other projects, the construction of the Norwegian Home?

A Yes.

* * * *

[28] Q In connection with the Norwegian Home job, can you describe in general the duties of The Austin Company in connection with its capacity as general contractor of the job.

A The duties of The Austin Company are actually passed on through me as the head of construction, with duties similar to what I have stated, plus the preparation of the drawings and the specifications which are put out for bids.

Q Well, let me ask you, what does Austin actually do in connection with the job, do they contact any of the operations on the job itself?

A Yes. We bill the complete project, and as such we ourselves are employers of labor, carpenters, bricklayers, cement finishers, ironworkers and operating engineers. We sub-contract electrical and mechanical trades, the mechanical trades including plumbing, the sprinkler work, the heat, ventilation and air conditioning. We also sublet specialties such as the asbestos tile flooring, ceiling work, carpeting and various things similar to that.

Q You have already indicated that Austin has drawn up the plans and specifications for this job.

A Yes.

[29] Q Can you tell me what the plans and specifications for a job include, describe them so that a reader of the record might get a visual picture of them.

A Yes.

The Austin Company is responsible for the design of the complete project. In doing this they prepare drawings and specifications for all of the various subcontractors, plus the specifications necessary for the purchase of material. The drawings are quite elaborate on a project such as this. I haven't counted them, but it could consist of forty or fifty drawings, specifications could consist of two hundred pages of material, the particular specifications for the HVAC—

Q Excuse me, HVAC, what would that mean?

A Heating, ventilation, and air conditioning.

HVAC, for example, is basically a 65 page specification and it does call for supplements to those specifications for items of equipment purchased by others which will be incorporated to the work by the heating, ventilating and air conditioning subcontractor, and those pages might add twenty or so pages to the work in question.

Q With respect to the HVAC specifications, was there a section of those specifications which related specifically to room heating and air conditioning units?

A There is a reference in the basic heating, ventilating [30] and air conditioning specifications which refer to another specification as part of the contract of work to be performed by this contractor, although purchased by others, and there were the specifications covering the Slant/Fin units.

Q In other words, part of the engineering specifications drawn up by Austin covered specifically the Slant/Fin units.

A Yes, sir.

MR. EDELMAN: I would like to have this document marked as petitioner's exhibit 1 for identification.

THE CLERK: Five page document headed, Specification 202 for room heating and air conditioning units for the Norwegian Christian Home Health Facility is marked for identification petitioner's exhibit number one.

So marked.

BY MR. EDELMAN:

Q Mr. Grand, I show you exhibit one for identification and ask you if you have ever seen it before and do you recognize it?

A Yes, I think these are the specifications drawn up by the Austin engineering department for the purchase of these units and for shipment to the heating, ventilation and air- [31] conditioning contractor as part of his work, namely, the installation of these units.

Q In other words, this would cover the type of units to be used on the job and how it is to be installed and the specifications that the units shall cover?

A Yes, sir.

* * * *

THE CLERK: Document marked for identification plaintiff's exhibit one now received in evidence.

BY MR. EDELMAN:

Q Mr. Grand, I would ask you if you were to read aloud the first paragraph in the specifications.

A It reads:

"furnish at the job site Slant/Fin Climate [32] Command Air Conditioners. The unit shall be complete with cabinet, filters, cooling chassis, heating coil, fans, main water flow and condensate assembly, controls, vent door, outdoor air plenun and outdoor air grille."

Q Now, turn to the third page of the exhibit, as part of the specifications which relate to the main water flow and condensate assembly, I would ask you if you would read that section, please.

A The part reads:

"the main water flow and condensate assembly shall be factory installed as an integral part of the unit by the manufacturer. The assembly shall be of copper construction tested to 150 psi leakage. Two shut off valves shall be provided to isolate the cooling chassis from the main line water supply for servicing. An automatic three-way valve shall be incorporated in this assembly to respond to the control panel's demand for cooling or heating. It will be directing water flow either through the water cooled condenser of the cooling chassis or to the hot water coil mounted in the lower part of the cabinet."

THE COURT: Do I take it that not only does the Slant/Fin manufacture but the specifications call for them to install, too: is that it?

MR. EDELMAN: In other words the specifications [33] set forth the particular type of units to be used, the model number, full and in detail, and the specifications further provide that the internal piping of main

water through the condensate assembly shall be piped and connected by employees of Slant/Fin.

THE COURT: I see.

* * * *

[37] Q Is Austin performing the HVAC work on the job?

A The Austin Company has subcontracted the HVAC work—

THE COURT: He is asking whether the company itself, I think counsel is not asking at the moment about the subcontractor.

A The Austin Company is not performing the work of the subcontractor.

[38] Q Was this work subcontracted?

A Yes it was.

Q And to whom was it subcontracted?

A To the Hudik-Ross Company, Inc.

Q Was there a written subcontract executed between Austin and Hudik-Ross?

A Yes, there was.

Q Were employees of Hudik-Ross members of this Union?

A Yes, as I understand it.

MR. EDELMAN: I would like to have this document marked as Petitioner's Exhibit 2.

THE CLERK: Six-page document headed the Austin Company, Lump Sum Sub-Contract, marked for identification as Plaintiff's Exhibit 2.

MR. EDELMAN: Is it correct that Hudik-Ross employees were members of Local 638, Mr. Fleishman?

MR. FLEISHMAN: Yes. That is correct. They were members of Local 638.

* * * *

THE CLERK: Purchase order from the Austin [39] Company dated January 14, 1972, marked for identification as Plaintiff's Exhibit 3.

* * * *

THE CLERK: Two-page letter from Slant/Fin to Mr. Walter Bogucki, dated January 19, 1972, marked for identification as Plaintiff's Exhibit number 4.

* * * *

[40] Q Is it your statement that the three documents that you have, Exhibits 2, 3 and 4, constitute a subcontract between the Austin Company and Hudik-Ross?

A Yes, sir.

* * * *

[42] Q All right.

Mr. Grand, in connection with the sub-contract, was it Hudik's responsibility to purchase the required unit?

A It was not.

Q And who purchased the required units?

A The Austin Company.

* * * *

[43] Q Mr. Grand, I show you Petitioner's Exhibit marked for identification number 5 and ask you if you recognize it?

A I do recognize it but—

Q Can you tell me what that is?

A That this is a change order to the original order, which is attached, and really should be marked as a separate exhibit because that precludes the other one (indicating).

This (indicating), the original purchase order, that is the original purchase order, the other one (indicating) is a change to that purchase order.

Q Would it be fair to say that the second page of the Exhibit is the purchase order?

A That is correct.

Q And that the first page is an amendment to the purchase order?

A Correct.

Q And that the third page is also part of the [44] original purchase order?

* * * *

THE CLERK: Document marked for identification as Plaintiff's Exhibit 5, now received in evidence.

* * * *

Q With respect to the Slant/Fin unit and in connection with the sub-contract between Austin and Hudik, what was Hudik's responsibility concerning the unit?

A Hudik should receive, unload, new to place of installation, install and pipe to it and try it.

Q In other words, connect up the unit so that it was operable?

A Correct.

Q Basically then, would you say its job was one of installation?

A Yes, sir.

Q By the way, how did Hudik come about being awarded the sub-contract?

[45] A By competitive bidding.

MR. EDELMAN: I'd like to have this document marked as Petitioner's Exhibit 6.

THE CLERK: Installation instructions marked for identification as Exhibit number 6.

* * * *

Q Mr. Grand, have you ever seen Petitioner's Exhibit marked for identification 6?

A Yes, I have.

Q Can you tell me what that is?

A It is prepared by Slant/Fin and submitted to the Austin Company giving a general description of the unit, of their units furnished.

Q Is it the Slant/Fin climate command unit?

A Yes, it is.

Q Are those the units that were used on the job?

A Yes.

Q I see.

The accompanying diagram, is that a diagram of the unit used on the job?

A Yes, sir.

Q With all the installation instructions?

A Correct.

[46] Q Would the main water flow and condensate assembly be set forth on that diagram?

A The piping shown, it is not diagramed to say—it does show the gate valves, it does show the couplings, it does show the control.

Q In other words, there are certain pipes—

A The pipes that are visible are the water and condensate connections.

* * * *

THE CLERK: Diagram marked for identification as Petitioner's Exhibit 6, now received in evidence.

* * * *

[47] Q Now, referring to that document, you indicated that there was certain piping that was part of the main water flow and condensate assembly that was represented on the diagram at page 3; is that correct, sir?

A Yes, sir.

MR. EDELMAN: Your Honor, I wonder if we can mark off that piping that represents part of the main work flow and condensate assembly so it may be referred to and be referred to it by myself.

THE COURT: You may do it.

Q Mr. Grand, would you circle the area that represents the main water flow and condensate assembly piping?

* * * *

A All right.

(The witness encircled the point indicated.)

MR. EDELMAN: May the record indicate that the diagram on page 3, the top diagram on page 3 has been circled twice in red ink by Mr. Grand as the areas which indicate the piping which is a part of the main water flow and [48] condensate assembly.

* * * *

Q I say did there come a time when the Slant/Fin units were delivered to the Norwegian job site?

A Yes, sir.

Q And when did that take place, on or about?

[49] A On or about the middle of June.

Q That would be 1972, I assume?

A 1972.

Q What was the purpose of these units?

A These units provided the heating and cooling of a majority of the rooms in the building, the rooms occupied or to be occupied by the residents of the building.

Q Is there a unit in each room?

A There is a unit in each of the rooms that I described.

* * * *

[50] Q In connection with the Norwegian job site, does Austin employ members of the steamfitting trade?

A No, we do not.

Q Does Austin have any contact with Local 638 or any other steamfitting labor organization?

A The Austin Company does have a national agreement with UAS, of which Local 638 is a part, but this is not for this type of work.

Q What type of work is it for?

A It is mainly process installation.

Q What is process installation?

A Process as differs from comfort, heating of a building, cooling of a building is all part of comfort work; processing involves machinery and equipment feeding any kind of gases, water, steam or anything else.

Q Was there any contract with Local 638 to perform any of the work, did Austin have a contract with Local 638 to perform any work on the Norweigan job?

A We had no contract with Local 638.

* * * *

[52] CROSS EXAMINATION

BY MR. FLEISHMAN:

Q When Hudik-Ross bid on this job, the specifications were made available to Hudik-Ross?

A Yes, sir.

Q And the specifications called for Slant/Fin units?

A Yes, sir.

Q So Hudik-Ross knew that as part of the heating maintenance and air conditioning work, if the contract was awarded to it, it would have to install Slant/Fin climate control units?

A Yes, sir.

Q And this matter of the Slant/Fin unit wasn't brought to Hudik-Ross' attention after the contract was awarded to it; am I correct?

They knew about it before they got the job that this was part of the work they were going to do?

[53] A Yes, sir.

Q Now they also had the specifications given to them which related to the Slant/Fin units?

A Yes, sir.

Q And are these (indicating) the specifications?

I show you Plaintiff's Exhibit number 1.

A These are the specifications covering the Slant/Fin units.

Q And these specifications were drawn by Austin?

A Austin Engineering.

Q Now, in the specifications there are certain words, sentences, which are underlined.

Were they in the original specifications?

A They were not.

Q They were not?

A The underlining, the words were in the specifications, the underlining was not.

* * * *

[54] Q Now I call your attention to page 201-3 of Petitioner's Exhibit 1 in evidence and ask you, does that relate to the work in dispute at this time?

A Would you repeat that, what part of it are you asking me about?

Q The parts that are underlined.

A It does relate to the dispute in question as it has been shown to me.

THE COURT: This was Exhibit 1?

MR. FLEISHMAN: That is correct, page 201-3.

Q And that states that this work is to be factory installed?

A Correct.

* * * *

[55] Q This was part of the specifications on which Hudik-Ross bid on this particular job?

A Yes.

Q And the job was awarded to Hudik-Ross in January 1972?

A Correct.

* * * *

[58] Q Mr. Grand, I show you Respondent's A for identification, and in general terms what would you call it?

[59] A A bulletin put out by Slant/Fin showing their climate command self-contained heating and cooling unit.

* * * *

[60] Q I ask you to turn to page 3 of Respondent's Exhibit A for identification and to turn to page 3 of Petitioner's Exhibit 6 in evidence and compare the two and tell me whether they refer to the same unit.

A They don't appear to me to talk about the same unit.

Q Will you read me the numbers of the models as set forth in Petitioner's Exhibit 6?

A The WC6, WC9, WC12 and WC16.

* * * *

Q Mr. Grand, I ask you to look at Petitioner's—Respondent's Exhibit A, on page 3, and they have the model numbers there.

Can you read the model numbers which this brochure [61] covers?

A The model numbers are WC6. WC9, WC12 and WC16.

Q And those are exactly the same numbers that appear on Petitioner's Exhibit 6?

A That is correct.

* * * *

Q Mr. Grand, I ask you to look at page 4 of Respondent's Exhibit for identification and read it, Respondent's Exhibit A, and read the last paragraph on that page.

A It reads:

"Monoflo tees by-pass and three-way valves shown are an integral part of each unit and are factory-installed within the cabinet."

Q Did you leave out a word there?

A I don't believe so.

Q What is the first word in that paragraph?

A "Note."

Q I don't think you read that.
A Well—
Q Now, this was called to the attention of people, wasn't it, wasn't it, this is something special?
A Yes.

* * * *

[63] MR. EDELMAN: Your Honor, I am going to object to this whole line of questioning, there is nothing in the complaint that specifies, and [64] as a matter of fact we concede that the steamfitters have performed other work in connection with their subcontract except the work related to the Slant/Fin units.

* * * *

Q Let us clarify this one point.
The Austin Company has a contract with the International Union?
A Yes, sir.
Q But it doesn't cover this type of work?
A No, sir.
Q So that in effect the Austin Company has no collective bargaining agreement with this or any other steamfitting union covering this type of heating, ventilating and [65] air conditioning?
A Correct.

* * * *

Q Directing your attention to Petitioner's Exhibit 1, page 3, and the paragraph referring to the main water flow and condensate assembly which has been underlined, you say the original specifications did not contain that underlining; is that correct?
A Correct.
Q Other than that, that is an exact photocopy of the original specifications?
A Yes, sir.
Q Do you know who underlined that particular section?
A I did.

* * * *

[66] Q And in what connection did you underline it?
A In connection with this dispute now.

* * * *

Q In other words, to point out the places that are in dispute.

* * * *

[72] PETER PLATH, called as a witness, having been first duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Mr. Plath, are you current employed?
A Yes.
Q And your employer's name?
A The Austin Company.
Q How long have you been employed by Austin?
A Since 1959 with the exception of two years in the army.
Q What is your present position with Austin?
A Project superintendent.
Q Are you connected with the Norwegian job?
A Yes.

* * * *

Q What is your position in connection with this job?
A Project superintendent.
[73] Q Have you been project superintendent from the inception of this project?
A Yes.
Q When was that?
A Late September in 1971.
Q Can you describe for us your duties as a project superintendent in this job?
A To direct Austin employees on the job, coordinate activity of sub-contractors and assure that the job is done according to plans and specifications.
Q In connection with your authority and duties, do you have authority to hire and fire employees if need be?
A Yes.
Q Are you a member of Local 638?
A No.
Q Are you a member of any labor organization?
A No.

Q Did there come a time in connection with your job as the superintendent of the job when the Slant/Fin units arrived at the job site?

A Yes.

Q When did this take place?

A They came in two shipments, one on the 14th of June, '72, and the second shipment was on the 21st of June, '72.

[74] Q How many units in total were on both shipments?

A In total it was 114.

Q Individual units?

A Yes.

Q Identical units?

A Not identical. I believe there are three or four different types.

Q Did they all contain the same prepiped water main flow and condensate assembly?

A Yes.

Q I direct your attention to the latter part of June, say the last week in June, and I ask you if you can recall having a conversation during this period with a Mr. William Daly.

A Yes.

Q Can you tell me who Mr. William Daly is?

A The business agent of the Steamfitters local in New York City.

Q Have you ever had any dealings with Mr. Daly before this conversation?

A No. I had met him before, but that was it.

Q Were you informed that he was a representative or an agent or delegate of Local 638 on those occasions?

[75] A Yes.

* * * *

Q You indicated that you had a conversation with Mr. Daly.

Can you tell me where the conversation took place?

A On the job site outside of the building.

Q As closely as you can, when did this conversation take place?

A The 22nd of June.

Q On or about the 22nd of June?

A Yes.

Q Morning or afternoon?

A Shortly before noontime.

Q Can you describe the conversation that took place?

[76] A He stated that his men would not install the Slant/Fin units as the piping inside those units was steamfitter's work.

Q Do you know George Zimmerman?

A Steamfitter foreman for Hudik-Ross.

* * * *

Q Do you have any—do you know whether he is a member of any labor organization?

A I believe he is a member of the Steamfitters Union of New York City.

Q Would that be Local 638?

A Yes.

Q You said he is employed by Hudik-Ross?

A Yes.

Q Is he on the job site, the Norwegian Home?

A Yes.

Q Does he work there every day?

A Yes.

Q In connection with the Slant/Fin units, do you recall having any conversations at any time with [77] Mr. Zimmerman?

A Yes.

Q Was it one conversation or more?

A It was almost on a regular basis.

Q When you say "regular basis," how regular, daily, weekly, monthly?

A At times daily, at other times twice a week, other times weekly.

Q Over what period of time did you have these conversations?

A In about the end of June to the present time, with the exception of the period while they were on strike, which was between the first week of July to August 7th.

Q Were these conversations that you had with Mr. Zimmerman concerning the Slant/Fin units, were they similar conversations or did they widely differ?

A No, they were always the same.

Q Well, tell me as best you can, what the sum and substance of these conversations were?

A I would ask the question when are you going to start hooking up the Slant/Fin units, and the answer in general would be, I haven't got the go ahead from the unit.

* * * *

[78] Q As project engineer, would you know when the unit should have been installed?

A As project superintendent.

Q I'm sorry, project superintendent.

A The original schedule called for installation to start the first week in July and run over a period of five to six weeks.

The fact that they did go on strike on the 1st of July, they came back to work on August 7th. At that time they should have started installing the Slant/Fin units.

Q Had there been no strike, the installation should have taken place in July?

A Exactly.

Q But the strike intervened?

A Yes.

Q But was concluded in August?

A Right.

Q And you claim thereafter the installation should have taken place?

A Yes.

* * * *

[79] Q Mr. Plath, I show you Petitioner's Exhibit marked No. 7 for Identification, and ask you if you ever have seen that before.

A Yes.

Q Can you tell us what it is?

A It's a schedule which indicates the progress of the various major items on the job.

Q Who prepared it?

A I did.

Q Is there any reference on this schedule to Hudik-Ross in connection with the Slant/Fin unit?

A Yes. On the second page under H.V.A.C., the item marked "Permimeter radiation and fin units."

Q That would be abbreviated "Per. rad. & fin units"?

A Right.

* * * *

[80] Q Bearing in mind that the strike ended on August 7th, when then should, based on this chart, when then should the work have begun and when should the work have been concluded?

A It should have started on the 7th of August and continued for six weeks, which would bring us to the last of the week of September 11th.

Q By the middle of September, the work would have been concluded?

A That's right.

* * * *

[82] Q Mr. Plath, I show you Petitioner's Exhibit marked for identification No. 8, and ask you if you have ever seen that before?

A Yes.

Q Will you tell us what it is?

A It is the minutes of the meeting held on the 29th of June, '72.

Q Did you prepare those meeting minutes?

A Yes.

* * * *

Q Is there any reference to the Slant/Fin units in those minutes?

A Yes, on the third page, paragraph B.

Q Would you read that?

A "Slant/Fin units 114, by Austin. On-job hookup of same being handled by F. Hudik. Steamfitters Union [83] states they will not hook up same as they are pre-assembled."

Q On what—how did that statement come to be in the minutes—

MR. FLEICHMAN: I object. But anyway, I will stipulate that that was so.

* * * *

[88] FRANK HUDIK, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Mr. Hudik, are you connected with the corporation, Hudik-Ross?

A Yes, I am.

Q What is your connection with that corporation?

A I am the president of that corporation.

Q What type of corporation is Hudik-Ross?

A Mechanical contracting company that does heating, ventilating and air-conditioning work.

Q Are you in any way connected with the Norwegian Home for the Aged job?

A Yes.

Q And what is your connection?

A We are performing the mechanical contracting work such as heating, ventilating and air-condition.

Q Is that under a sub-contract?

A Yes, with The Austin Company.

Q I show you Petitioner's Exhibits 2, 3 and 4, and ask you if you will look at them and tell me if you ever have seen those before and if you have, tell me what [89] they are.

A Sub-contract for the particular job known as the Norwegian Christian Home for the Aged.

* * * *

Q How did you become to be awarded this sub-contract?

A We bid for the job and we were the low bidder.

[90] Q As part of your sub-contract with Austin, were you required to install Slant/Fin climate control units?

A Yes, we were.

Q In connection with this unit, what was the sum and substance of the work you were required to perform?

A There were plans and specifications stipulated for the job. The specifications stipulated that we were to receive and install the Slant/Fin units in the building.

Q You are talking about the—is this your sub-contract which required this?

A With The Austin Company, yes, to receive and install these units.

Q Were there also specifications, job specifications, in connection with your work as H.V.A.C. contractor?

A Yes.

Q Did these job specifications also relate to the Slant/Fin unit?

A Yes.

Q Did you look at the job specifications in this connection?

[91] A When we did the job?

Q At any time.

A Yes.

Q And did the job specifications require Slant/Fin units?

A The job specifications stipulated that somebody else, The Austin Company, would furnish the units, the Slant/Fin units to us for installation by us.

The specification so stipulated.

Q Do you recall the specification stipulating anything concerning the main water flow and condensator?

A The specifications stipulated that the main water flow and assembly was to be fabricated, installed and pretested at the factory.

Q Did you have any authority to substitute any other unit to replace the Slant/Fin unit?

A No.

Q Did you have authority to alter in any way the job specifications for this job?

A No.

Q Did you have authority to take apart and reassemble the main water flow and condensate assembly in the field?

A No.

[92] Q I show you Petitioner's Exhibit 6, a diagram of the Slant/Fin unit, and I ask you if you can identify

on that diagram on page 3, the visible parts of the main water flow and condensate assembly.

A Basically as outlined in red with the addition of a line running through the unit from the left-hand side of the illustration to the right-hand side of the illustration.

Q Using again this diagram, as a guide, what would be your job in connection with the installation of this unit?

A To connect to an inlet on one side of the unit exterior to the casing and connect to the opposite side of the unit, exterior, to the casing.

Q Would it be a fair description to say that in the room the unit was to be installed with two pipes, approximately in a space between the two pipes the width of the unit and these pipes were to be connected to the unit?

A That's correct.

Q Can you mark on that diagram where the pipes would be connected?

A Well, the other one because of the isometrics here.

MR. EDELMAN: Let the record show the [93] witness has indicated his answer by a black "X" on the diagram.

Q Do you have a regular complement of employees?

A Yes.

Q About how many in your complement?

A Are you referring specifically to steamfitters?

Q I am referring specifically to steamfitters.

A Anywhere between 10 and 20 steamfitters.

Q And that would depend on the number of jobs under construction?

A That's correct.

Q The size of the job?

A That's right.

Q These steamfitters you have in your employ, are they represented by any labor organization?

A Yes.

Q And that labor organization is what?

A Local 638.

Q Do you have a collective bargaining agreement with Local 638?

A Yes, we do.

Q Is there a present collective bargaining agreement with Local 638?

A Yes.

* * * *

[94] Q Have you had a prior series of agreements of collective bargaining with Local 638?

A Yes.

Q Mr. Hudik, I show you Petitioner's Exhibit, marked for identification, Nos. 9 and 10, and ask you to look at them, and I ask you if you have seen them before and if you have, tell me exactly what they are.

A Exhibit No. 9 is the working agreement, a working [95] agreement that we had with the Enterprises Association, Local Union 638. It is dated '66 and then '69. '69 terminates.

Exhibit No. 10 is an interim agreement which we signed with the Local 638 to allow us to work during a period of June 30, 1972, to June 30, 1973.

Q Would the '66—'69 agreement, is that incorporated and part of your present agreement?

A Yes.

Q The addendum just modifies the working agreement to bring up the wage schedules and other amendments to date?

A Yes.

Q You had a similar amendment to the agreement which expired in 1972?

A Yes.

Q And when did the agreement expire in 1972?

A In June.

Q Of 1972?

A Yes.

Q I direct your attention to the working agreement, specifically directing your attention to Rule 9 of the working agreement, and I ask you to look it over.

A Yes, I am familiar with it.

[96] Q Is Rule 9, as it is contained in this exhibit, in your present contract?

A Specifically?

Q Yes.

A I don't know how to answer the question.

We don't get an additional contract, we get just amendments and the amendments specifically spell out just the changes in the contract.

Q Has the amendment changed Rule 9?
A No, it has not.
Q Did the prior amendment change Rule 9?
A No, it has not.

* * * *

Q Did there come a time when the Slant/Fin units arrived on the job site?
A Yes.
Q Do you recall approximately when they arrived?
A I thought they arrived in August but I was corrected [97] and I know they arrived in June.
Q Of 1972?
A Yes, 1972.

* * * *

Q Who is Arthur Chersin?
A Arthur Chersin is an employee of ours.
Q What is his position?
A Project engineer.
Q And what was the conversation—
A An estimator.

* * * *

Q I direct your attention to September 15th on or about that time and ask if you had knowledge whether the Slant/Fin units had been installed as of that date?
A They had not been installed as of that date.
[98] Q And should they have been installed as of that date?
A They should have been started. The installation of the Slant/Fin units should have been started in accordance with the progress of the job.

* * * *

[100] Q Mr. Hudik, * * * I direct your attention to September 22nd, on or about that date, and ask if you recall having a conversation with Mr. Daley at that time?
A Yes, I do.
Q Where did the conversation take place?
A It took place in a restaurant in New York.

Q What was the name of the restaurant?
A Downey's.
Q Can you tell us what the conversation was?
A Mr. Daly and I were discussing the job and Mr. Daly said that we were in violation of the contract, the units received on the job were in violation of the contract, [101] and that he could not allow us to install the units as they existed on the job.

I told him that this was part and parcel of the plans and specifications, and I had no choice in the matter, but he insisted that we were in violation of Article 9, and that he could not allow us to proceed.

Q Have the units been installed to date?
A No.

* * * *

CROSS-EXAMINATION

BY MR. FLEICHMAN:

* * * *

Q Were you the individual, Mr. Hudik, who checked the plans and specifications on this job, prior to bidding on the same?
A No.
Q Who did the estimating for you?
A Chersin.
Q Mr. Chersin?
A Yes.

* * * *

[102] Q Did you bid the job personally?
A No.
Q You weren't in charge of the bidding?
A That is a broad question.
Q Did you know what the job called for in the way of heating, ventilation and air-conditioning?
A When we bid the job?
Q Yes.
A No.
Q When did you first find out about that you had bid on the job?
A Just after the job was bid and we were told that were [sic] were in the running.

Q Did you inquire as to what was called for in the way of heating, ventilating and air-conditioning work?
A When?
Q At anytime prior to the awarding of the job to you.
A No.
Q And who was in charge of that?
A Mr. Chersin.

* * * *

[104] Q Did you know whether there was any work to be done there by the manufacturer at this factory rather than at the job site, that is, piping, branch piping, convectors, condensate assemblies, etc.?
A At what time are you asking me this?
Q Shortly after you obtained the contract.
[105] A I did know.
Q You did know?
A Of course I did.
Q But Mr. Chersin had read the specifications before the contract was awarded to your company?
A I can't tell you what Mr. Chersin did.
Q Who signed the bid letter?
A I don't recall.
Q How many men are in the administrative end of your business?
A About 10.
Q And who signs the bid letters, usually?
A Usually the estimator signs the bid letters.
Q And he is authorized to do that?
A Yes.
Q And in accordance with the practice in your business, the estimator reads the plans and specifications and calculates how much he can do the job for, and then signs the bid letter; is that correct?
A Yes.
Q And in this particular job, Mr. Chersin did the estimating?
A That's correct.

* * * *

[108] Q You had had collective bargaining agreements with Local 638 for many, many years?
A Yes.

* * * *

Q I show you Respondent's Exhibit B for Identification and ask you whether that is your signature.
[109] A Yes, it is.
Q And this contract covers the period '69 through June 30th, I think, of 1972?
A June 30, '69 to '72, oh, yes. Right.

* * * *

Q This agreement, that is the one which is Respondent's Exhibit B in Evidence, incorporates by reference, does it not, Rule 9 which appeared in the 1966-69 agreement, Petitioner's Exhibit 9?
A Yes.
Q Petitioner's Exhibit 10, which is the interim agreement, effective July 1, 1972, contains or incorporates all of the provisions of the old Rule 9, plus a few other relating to identification of work done in the shop?
[110] A That's correct.
Q So that from at least 1966 until the present time, Rule 9, as originally set forth, has continued?
A That's correct.
Q And when you met with Mr. Daly on September 22nd, he told you that your company was violating Rule 9 of the agreement?
A That's correct.

* * * *

[111] Q Your estimator has the authority to sign bid letters?
A Yes.

* * * *

[115] GEORGE ZIMMERMAN, called as a witness, having been sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Are you currently employed?
A Yes.
Q Who is your employer?
A Hudik-Ross.
Q How long have you been employed by Hudik-Ross?
A About 13 years.
Q What is your present capacity with Hudik-Ross?
A The man in charge of the job of the Norwegian Home.
Q Would that be a job foreman?
A Similar. We don't specify foreman.
Q Have you been on the Norwegian Home job site [116] since Hudik began working on it?
A Yes.
Q Presently working on this job site?
A Yes.
Q Are you a member of Local 638?
A Yes.
Q How long have you been a member?
A Twenty-two years.
Q Is there a shop steward on the Norwegian job site?
A Yes.
Q Is he a regular employee of Hudik-Ross?
A Yes.
Q Is he there every day?
A Yes.
Q What is his name?
A George Zimmerman.
Q You are the shop steward?
A Yes, I am.
Q I assume then, well, why don't you state your functions in connection with your capacity as a shop steward?

A Represent the union as far as our working agreement goes.
[117] Q If a problem arises at the job site, do you get in touch with the union?
A I notify the business agent.
Q Who would that be?
A Bill Daly.
Q Do you recall the time coming when the Slant/Fin units arrived on the job site?
A Yes.
Q Did you unload them or take part in the unloading?
A Yes, I did.
Q Had you connected them as yet?
A No.
Q Can you tell why you have not connected them?
A Well, the piping to me was in violation of our contract.
Q That is why you didn't connect them?
A Yes.
Q Did you tell any representative of Austin or Hudik-Ross that you were not going to connect the units because it was a violation of your contract?
A I notified my business agent first.
Q Mr. Daly?
[118] A Yes.
Q And did you receive any instructions from Mr. Daly?
A To hold off until there was a decision made.
Q A decision made by whom?
A His superior or anyone further on.
Q Did you inform either representatives of Hudik-Ross or Austin as to the union's position?
A After Bill Daly was informed, yes, sir.
Q Who did you inform?
A Pete Plath, the job superintendent, and Art Chersin.
Q You informed these individuals?
A Right.

Q Is it a fact that from time to time they asked you whether or not you would be able to install the units?

A Right, yes.

Q Did you answer them on each occasion?

A I answered them, yes.

Q And what was your answer?

A That I couldn't proceed with it.

Q And did you indicate a reason why?

A Because it is the usual procedure that I had to wait for a decision.

[119] Q Did you ever tell either Mr. Plath or Mr. Chersin that the units were prepiped and that you couldn't install them for that reason?

A That is what the original thing was.

* * * *

CROSS-EXAMINATION

BY MR. FLEICHMAN:

Q Mr. Zimmerman, how long have you been a steamfitter?

A Twenty-two years.

* * * *

Q How long have you worked for Hudik-Ross?

A Approximately 13 years.

Q And during all of this period, was Hudik-Ross in contractural agreement with Local 638?

A Yes, he was.

Q Now, with respect to the Slant/Fin climate command unit, I show you Respondent's Exhibit A, and ask you to turn to page 3 and state whether this is a fair representation of the unit?

[120] This is the unit of our job.

Q This is the unit?

A Right.

* * * *

[121] Q Are there any other units on the market similar to these?

A Yes, there is.

* * * *

[122] Q Have you worked on any of these units?

A I worked on most of them.

Q And can you give me the name of, say, one unit?

A American Standard.

Q American Standard?

A Right.

Q Does it have an air-conditioning unit?

A Yes, it does.

Q Does it have hot water generated in the basement?

A Yes, it does.

Q Does it have a bypass arrangement?

A No.

Q Does it have a condenser?

A No.

Q Does it have a fan?

A Yes.

Q Now, the piping in that unit that is for the connecting of various parts, who did that work?

A It was prefabricated on the job.

Q And what was done by Local 638 men on the job?

A All pipings to the stubs which is the final connection [123] on the unit.

Q Was this done while you were employed by Hudik-Ross?

A Yes.

* * * *

Q I show you Petitioner's Exhibit 9 which is [124] the 1966-69 contract and call your attention to Rule 9. First of all, what is the title of that rule?

A "Cutting pipe and making up fittings."

Q Under what language does the test of cutting and connecting fabricating the water main flow and condensate assemblies come?

A Under the heading "Radiator branches, coil connections shall be cut and threaded by hand on the job, in accordance with Rule 5."

Q And Rule 5 refers to what?

A Two-man trade.

Q So that can you state whether or not this rule, as you read it, has been applied consistently, to the

best of your knowledge, in connection with work of this type?

A On all jobs I have ever been on, it has been applied all the time.

Q As part of your duties, do you have to work in accordance with plans and specifications?

A Yes, I do.

Q And did you have—and this applied also to this particular job?

A Yes.

Q And were you able to—did you also have [125] copies or a copy of Respondent's Exhibit A?

A Yes.

Q And did you have any other material relating to Slant/Fin units?

A Yes, the complete breakdown of the unit.

Q When the units were delivered, did you do anything with respect to the units?

A Yes. I distributed them on the job and started mounting.

Q Did you examine what was behind the faceplate?

A Yes, I did.

Q How did you do that?

A Taking the front cover off.

Q And then you saw the parts which you claim came within Rule 9?

A Right.

Q What was the time juxtaposition or relationship between when you took the cover off and saw what was there, and you called Mr. Daly?

A The next day, that night. I couldn't say exactly when. It was within the period of time that I unloaded them.

* * * *

[129] WILLIAM J. DALY, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. FLEICHMAN:

Q Are you associated with Local 638?

A Yes.

Q How long have you been a member of Local 638?

A Thirty-four years, excluding time in service, five years in service.

Q Were you ever a working steamfitter?

A Yes, I was.

Q How many years?

A Twenty-two or twenty-three years.

Q What is your present position with the union?

A I am a business agent.

Q How many years have you been a business agent?

A Eleven years.

* * * *

[130] Q Was the Norwegian Home for the Aged within your territory?

A Yes, it is.

Q When did you first hear of the dispute in connection with this Slant/Fin unit?

A Well, I had a call from my foreman that a truckload of these units came in and he asked me if I would stop out to look at them.

The following day I was out on the job and there was another truck there. They were unloading. Whether it was the same truck or a new one, I am not sure.

Q When was that?

A The dates I am not too sure of.

Q Was there then a dispute as to certain work to be done—

A Well—

[131] Q (Continuing)—with respect to the unit?

A With respect to the unit, the piping that was on it, I met the superintendent there, Pete there, and I mentioned there was a violation here.

Q What violations were you referring to?

A The violation of Rule 9 of the agreement.

Q And who was the agreement between?
A Between 638 and Hudik-Ross Company.
Q Was the dispute with Hudik-Ross?
A With Hudik-Ross, yes.
Q Did you have occasion to examine the unit?
A Yes, I did.
Q Did you do that in connection or accompanied by Mr. Zimmerman?
A I did.
Q What did you do in connection with the examination of the Slant/Fin unit? What did you see?
A I seen all the internal piping that was hooked up to the coil which is usually done by the steamfitter at the job site over the years I have been around.
Q Were there branches there?
A Branches, correct.
Q Did you inform Hudik-Ross as to whether any provisions of the agreement was being violated?
[132] A Yes, I did.
Q Who did you inform?
A The first one I informed was the superintendent, John Guilfoyle, and after that I informed Frank Hudik himself.
Q What particular portion of the trade agreement did you rely on?
A I relied on Rule 9, that all branch work should be done on the job site.
Q Was this an innovation on the part of Local 638 or was it traditional?
A Well, in the years I have been around, I have seen it happen once before with one of our contractors and it was corrected. That is the only other time I ever ran into it.
Q Otherwise, all other instances, who did the work?
A The steamfitter on the job site did it.

* * * *

[133] FRANK HUDIK, called as a rebuttal witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

* * * *

[135] CROSS-EXAMINATION

BY MR. FLEICHMAN:

* * * *

[136] THE COURT: You may bring out what is the situation with one and what are the specifics as to the other.
Q All right. Let's get down to this:
Did you tell Mr. Daly that Rule 9 did not apply to this unit because of the nature of its construction?
A Yes.
Q Did you say that was so because the work had been pre-assembled in Slant/Fin's factory?
A Yes.
Q That was the reason why you told Mr. Daly [137] that, because it had been pre-assembled in the Slant/Fin factory?
A Pre-assembled and pretested.
Q In the Slant/Fin factory?
A Correct.
Q But you didn't tell him that it wasn't the work of Steamfitters Local 638 because the contract didn't provide for such work?
A Would you give me that again, please?
Q As I understand it, Mr. Daly told you that this particular work was work belonging to the steamfitters, in accordance with Rule 9 of the contract.
A Correct.
Q And your reply to him was, but it had already been done at the factory?
A And pretested.
Q And pretested?
A Correct.
Q And that removed it, did you say, from Rule 9?
A I don't remember whether I said anything like that.
Q That's right, you don't remember that.
All you said is that it had been pre-assembled and pretested?
A That's correct, I think so.

[138] Q And Mr. Daly said but the contract is clear that that—that this type of work has to be done on the job?

A Mr. Daly said that we were in violation of Rule 9.

Q And your only reply to that was that the work had been pre-assembled and pretested at the Slant/Fin factory?

A I believe so. Words to that effect.

* * * *

[139] WILLIAM J. DALY, recalled as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. FLEICHMAN:

Q Mr. Daly, when you had this conversation with Mr. Hudik and you maintained that having the work done in the Slant/Fin factory was a violation of Rule 9, what was Mr. Hudik's reply to that?

A Well, the only thing I can recall is that he did mention it wasn't bought by him, the equipment, and that was the end of it. He did not buy the equipment.

* * * *

What did he say with respect to Rule 9, any violation of Rule 9?

A I don't know whether he agreed or disagreed. The only reason he stated—the only statement that he made to me was the fact that he did not buy this equipment. He didn't say whether it was a violation or wasn't a violation [140] one way or the other.

Q Did Local 638 at any time have a labor dispute with Slant/Fin because Slant/Fin does not or did not have a collective bargaining agreement with Local 638 or employed members of 638?

A To my knowledge, never.

Q Did you ever speak to anybody of Slant/Fin?

A Never did. Definitely not.

Q Did you ever attend any meeting at which a representative of Slant/Fin was present?

A No, I did not.

Q Did you ever tell Mr. Hudik that you wanted a collective bargaining agreement with Slant/Fin or you wanted Slant/Fin to employ members of Local 638?

A Never did.

* * * *

PLAINTIFF'S EXHIBIT 1 ev. 72C1393

SPECIFICATION 201
FOR
ROOM HEATING AND AIR CONDITIONING UNITS
FOR
THE NEW HEALTH RELATED FACILITY
NORWEGIAN CHRISTIAN HOME FOR THE AGED, INC.
BROOKLYN, NEW YORK

THE AUSTIN COMPANY ROSELLE, NEW JERSEY

GENERAL

Furnish at the jobsite *Slant/Fin Climate Command Air Conditioners.* The units shall be *complete* with cabinet, filters, cooling chasis, heating coil, fans, *main water flow and condensate assembly, controls,* vent door, outside air plenum and outdoor air grille.

Each unit must fit in the space allowed and in no case be greater than 9 inches in depth.

Materials, equipment—shall be first quality and in strict accordance with all of the governing codes local and state, laws, regulations, and ordinances including the City of New York Building Code, Underwriters Laboratories, Inc., NFPA, NEMA and Providence Washington Ins., Co.

CAPACITY

Unit capacity shall be as indicated on the schedule on sheet 204 dated 11-20-71 and on the drawings.

CABINET

Cabinet will be constructed of 18 gauge zinc coated cold rolled steel that has been thoroughly degresed and finished in a standard factory

* * * *

FILTER

An expanded aluminum mesh washable filter will be provided with the unit, so located that it can be removed for cleaning without removing the Front Panel.

COOLING CHASSIS

The cooling chassis will be constructed of 18 gauge zinc coated cold rolled steel with a baked prime coat grey finish. This chassis will contain an evaporator coil of aluminum fin and copper tube construction, a capillary tube refrigerant flow control, a fully hermetic reciprocating R-22 compressor, a copper and steel construction tube-in-tube water cooled condenser, an evaporator fan and drain pan assembly, and associated electrical controls.

The condensate drain pan will be constructed of 18 gauge cold rolled steel, protected with a zinc coating, with the water collecting surfaces coated with a non-metallic waterproofing compound.

The evaporator fan motor shall be a two speed, shaded pole, thermally protected motor designed to operate on 115 volt or 208 volt CPS, single-phase, AC electrical service, as required by unit size.

There will be two aluminum forward curved centrifugal blower wheels, one mounted on either end of the fan motor, enclosed in blower housings. The blower wheels shall be statically and dynamically balanced for quiet operation.

The evaporator drain pan, fan motor and blower wheels and housings will be assembled in such a manner as to permit installation and removal as a unit for ease in cleaning the drain pan.

MAIN WATER FLOW AND CONDENSATE ASSEMBLY

The main water flow and condensate assembly shall be factory installed as an integral part of the unit by the manufacturer. The assembly shall be of copper con-

struction tested to 150 psi leakage. Two shut-off-valves shall be provided to isolate the cooling chassis from the main line water supply for servicing. An automatic three-way valve shall be incorporated in this assembly to respond to the control panel's demand for cooling or heating, thereby directing water flow either through the water cooled condenser of the cooling chassis or to the hot water coil mounted in the lower part of the cabinet. The hot water coil shall be of copper tube and aluminum fin construction.

* * * *

PIPE COVE MOLDING

Pipe cove molding will be installed in each room containing Climate Command units to provide concealment of piping along wall at floor level. Molding will run from unit to wall and from unit to unit in rooms containing more than one unit.

Pipe cove molding shall be constructed with 22 gauge steel and shall be provided with mounting brackets to support 1¼" copper tubing of the main loop, ¾" condensate line and the cover. Finish shall be factory standard baked enamel in shell white.

ELECTRIC MOTORS

Motors shall be of General Electric Co., Westinghouse or approved equal, induction types and shall be designed, wound and built for quiet operation.

Motors shall be of the 40 degree C. ambient type and are to be rated in accordance with the American Standards for Rotating Electrical Machinery "(A.S.A.—C50 and are to comply with the regulation of the National Electrical Code.)

Motors below ½ horse power shall be wound for 120 volt, 60 hertz single phase, alternating current; and motors of ½ horse power and above shall be for 208 volt, 60 hertz, 1 phase, alternating current.

Motor speeds shall not exceed 1800 RPM.

Name plate ratings shall not be less than brake HP of equipment to be driven, in full range of operation conditions.

Two speed motors shall be of the induction type, single wound.

EXCEPTIONS

Any exceptions to this specification shall be listed in writing along with alternate prices listed in bid.

GUARANTEE

Manufacturer shall furnish a written guarantee for a period of one year after completion of installation and start-up covering any defects in materials and workmanship resulting from his work.

PLAINTIFF'S EXHIBIT 2

THE AUSTIN COMPANY
LUMP SUM SUBCONTRACT

THIS SUBCONTRACT entered into this 14th day of January, 1972, by and between THE AUSTIN COMPANY, an Ohio Corporation of Cleveland, Ohio (hereinafter called "CONTRACTOR"), and Hudik-Ross Co., Inc. (hereinafter called "SUBCONTRACTOR"), for certain work to be performed by Subcontractor in connection with construction work being, or to be performed by the Contractor for Norwegian Christian Home for the Aged, Inc. (hereinafter called "OWNER"), at: 1255 Ovington Avenue, Brooklyn, N.Y.

WITNESSETH: That it is hereby agreed by and between the parties hereto as follows:

ARTICLE 1. Subcontractor shall provide all the necessary materials and perform all of the following work, to be installed on the premises of Owner in accordance with terms and requirements of covering Purchase Order No. 1012-27, General Requirements, dated 1/4/71. The Specifications for pages SEE THE PURCHASE ORDER, inclusive, dated ..... And drawings SEE THE PURCHASE ORDER.

ARTICLE 2. (a) The price to be paid by Contractor and accepted by Subcontractor for the performance of this Subcontract is Two Hundred & Sixty Nine Thousand Five Hundred & Fifty & 00/100 Dollars ($269,550.00) subject to deductions and additions as herein provided. Payments on account shall be made: On the 20th day of each month, following the month of performance, eighty-five (85%) per cent of the cost of the work in place, as approved by Contractor, and proportionate to the amount of this Subcontract, for labor and materials acceptably incorporated into the work up to the last working day of the preceding month, less the aggregate of previous payments, provided that Subcontractor shall have paid in full

all bills for labor and materials, and if requested by Contractor, shall have submitted to it receipted invoices as evidence of payment of all accounts in full. The balance shall be paid thirty (30) days after entire completion and final acceptance. No certificate given or payment made (except the final certificate or the final payment) shall be evidence of the performance of this Subcontract either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.

(b) No extra work shall be performed or paid for unless Contractor shall have issued, prior to the beginning thereof, its written order therefor. No increase or decrease in the price of the work to be performed shall be made, nor shall any claim be made for damages or anticipated profits except upon the written approval of Contractor.

* * * *

(d) Contractor may disburse from monies owing by it to subcontractor such sums as it may determine to be necessary to pay for materials, equipment, labor or supplies used, ordered, or delivered for incorporation into work to be performed by subcontractor.

Should subcontractor, in case of dispute, fail to pay claimed obligations for such materials, equipment, labor or supplies, subcontractor shall post bond or securities sufficient to protect Owner and Contractor against filing of any lien or encumbrance against property of Owner.

(e) Subcontractor shall procure Contractor's written approval before subletting any portion of this Subcontract for a sum exceeding five hundred ($500.00) dollars.

(f) Subcontractor, at Contractor's option and expense, shall furnish an approved Surety Company's bond for the performance of this subcontract.

ARTICLE 3. (a) Subcontractor shall substantially complete the work under this Subcontract to the entire satisfaction of Contractor and Owner, within ninety (90) working days after the date Subcontractor begins, or is instructed to begin, said work, whichever is earlier. Time is of the essence of this Subcontractor.

(b) A working day is a day, exclusive of Sundays, Saturdays and legal holidays, on which Subcontractor is able to employ effectively more than fifty per cent (50%) of the usual daily man hours (Job Staff excluded) for regular working hours.

(c) Should Subcontractor be delayed in the substantial completion of said work by Contractor or Owner, fire, strikes, lockouts, acts of public officials, embargoes or war, then said time shall be extended for a period equivalent to the time lost by reason of any of said causes, but no such allowance shall be made unless a claim therefor be presented in writing to Contractor within twenty-four (24) hours of the occurrence thereof.

ARTICLE 4. Subcontractor shall submit for approval 3 copies of all shop or setting drawings and schedules required for his work. Contractor's approval of such drawings or schedules shall not relieve Subcontractor of responsibility for errors of any sort in such shop drawings nor of responsibility for deviation therein from drawings and specifications furnished by Contractor unless Subcontractor has, in writing, advised Contractor of such deviation.

ARTICLE 5. Guarantee—Subcontractor shall repair and make good any damages, defects, or faults in Subcontractor's work or materials, including materials or equipment partially or completely covered by manufacturer's guarantee, together with work of other trades disturbed as a result of such repairs, that may appear within one years after date of final acceptance. Subcontractor shall also, within guarantee period, make any corrections or adjustments necessary to meet specified performance results.

ARTICLE 6. (a) Contractor, at any time before completion of the work, may order additions, omissions or alterations to or in the said work, materials or equipment, but no such changes shall be made except by a written order signed by Contractor in which the additional amount to be paid by it therefor or to be deducted

from said contract price, together with additional time, if any, for the performance thereof, shall be stated. Unit prices, if any are named in this Subcontract, shall be used in determining the value of such changes.

(b) All clauses of this Subcontract shall apply to any changes, omissions or extra work in like manner and to the same extent as the work contracted for, and no changes, omissions or extra work shall annul or invalidate this Subcontract.

(c) Should Contractor request Subcontractor to work overtime in order to expedite the final completion of the work, Subcontractor shall do so, and Contractor shall pay therefor only the actual labor cost over the rate of regular time for said overtime. Time slips covering said overtime, must be submitted to, checked and approved by Contractor at the site of the work. No commission or overhead shall be paid to Subcontractor for or on account of said overtime. If Subcontractor, in the opinion of Contractor, unduly delays the progress of the work, then, if requested by Contractor, Subcontractor shall at its sole expense perform such overtime work as may be necessary to finish said work within the specified time. Contractor's decision governing the necessity of said overtime shall be final.

ARTICLE 7. (a) Subcontractor shall provide proper facilities at all times for the inspection of the work by Contractor, Subcontractor, within twenty-four (24) hours after receiving written notice from Contractor to that effect, shall proceed to remove from the ground or buildings all material, whether worked or unworked, condemned by Contractor, and take down all portions of the work which Contractor shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications.

(b) Subcontractor shall cooperate with Contractor and all other subcontractors and materialmen employed on the work in order to avoid complications and insure first-class workmanship in every respect, and in the manufacturing, assembling and erection of the work shall em-

ploy only workers who are qualified, careful and efficient, in strict conformity with the best standard practices.

ARTICLE 8. (a) Subcontractor shall comply with all laws relating to workmen's compensation, occupational diseases, wages and hours, taxes and contributions in respect to unemployment insurance and all other laws and regulations, state and federal, applicable to persons directly or indirectly employed by said Subcontractor and other persons on said work. Subcontractor shall maintain in force insurance protection in amounts agreed upon covering Subcontractor's liability under workmen's compensation and occupational disease laws, Subcontractor's general liability (bodily injuries and property damage) including contractual coverage for undertakings under this Article and Subcontractor's liability with respect to the ownership and operation of automobiles. It also agrees, when required by law, to make payments to Subcontractor's employees or their dependents and to save Owner and Contractor harmless from all liability for such payments. Should any part of this subcontract be sublet, Subcontractor shall, in addition to the foregoing types of insurance, maintain Owner's and Contractor's Protective Liability Insurance in the same amounts, except that Owner's and Contractor's Protective Liability Insurance need not be maintained to the extent that its subcontractors maintain the same coverages required for Subcontractor. Certificates of all such insurance shall be furnished to the Contractor.

(b) Subcontractor agrees to indemnify and save harmless Owner and Contractor against all liability for personal injuries, including death resulting therefrom, sustained by any person directly or indirectly employed by Subcontractor or its subcontractors, caused or alleged to have been caused, directly or indirectly, by an act or omission, negligent or otherwise, by Owner or Contractor or persons directly or indirectly employed by them, and to assume the defense of any action brought by persons so injured or their personal representatives against Owner or Contractor to recover damages for such injuries.

(c) Subcontractor also agrees to indemnify and save harmless Owner and Contractor against all liability for personal injuries, including death resulting therefrom, and against all liability for property damage, sustained by any other persons or corporations whatsoever, including Contractor's or Owner's employees, caused or alleged to have been caused, directly or indirectly, by any act or omission, negligent or otherwise, on the part of Subcontractor, or its Subcontractors, or persons directly or indirectly employed by them and arising out of the performance, or in any way connected with the performance, of this contract, even though some act or omission, negligent or otherwise, of Owner or Contractor or persons directly or indirectly employed by them may also be a cause or an alleged cause of such injury.

(d) The extent of the Subcontractor's obligation under Article 8 shall be governed by the law of the State of Ohio.

ARTICLE 9. (a) Subcontractor agrees (1) to pay all federal or state sales and use taxes or similar levies on all material, tools and equipment furnished under this subcontract, and (2) to assume all risk and liability for loss or damage, however caused, to Subcontractor's material, tools, or equipment not incorporated in the work.

(b) Subcontractor shall provide and maintain at all times sufficient protection of all its work, material and equipment from damage or loss by theft, and shall protect Owner's, Contractor's and adjoining properties from any and all injury arising in connection with the performance of said work. Subcontractor shall make ?????, any such damage or injury suboccurring, without any expense whatsoever to Contractor or Owner.

ARTICLE 10. (a) Subcontractor, for itself and all persons, partnerships or corporations performing labor, doing work or furnishing materials in and about the erection and construction of said work, hereby expressly waives any and all liens of every kind or nature to which it and/or they are or may be entitled under any Act, Statute or otherwise.

(b) Subcontractor shall disclose this provision of this Subcontract to all said persons, partnership or corporations before any such labor or work is performed or material furnished and before any agreement with reference thereto is made by Subcontractor.

(c) Upon completion of all work required hereunder, Subcontractor shall submit with its invoices an affidavit by a qualified representative, to the effect that all obligations for labor and materials have been paid in full, accompanied by a waiver of lien rights.

ARTICLE 11. Subcontractor has thoroughly familiarized itself with the building site conditions and with the request for quotations, instructions to bidders, bulletins issued prior to the date for receiving of proposals, form of proposals, plans and specifications for said work, material and equipment, and is familiar with the shipping and delivery facilities and all other matters and conditions which will affect the operation and completion of said work and it assumes all risks therefrom.

ARTICLE 12. No assignment of this Subcontract or any money due, or which may become due hereunder shall be made without the written consent of Contractor.

ARTICLE 13. If Subcontractor becomes insolvent, or if a petition in bankruptcy be filed by or against it, or if it should make a general assignment for the benefit of creditors, or if a receiver should be asked or appointed for it, or if it should refuse or fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it should fail to make prompt payment to its subcontractors or for material or labor (except where the liens of all such parties have been waived) or disregard laws, regulations, ordinances or the instructions of Contractor, or otherwise be guilty of a substantial violation of any provision of this Subcontract, or should the Subcontractor at any time refuse to start said work promptly, neglect to supply a sufficient number of properly skilled workmen, or sufficient materials of the proper quality,

or fail in any respect to prosecute the work with promptness and diligence, or if Subcontractor fail in the performance of any of the agreements herein contained. Contractor may, after twenty-four hours' written notice to Subcontractor, provide any such labor or materials, and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Subcontract; and at its option may terminate the employment of Subcontractor for the said work and terminate this Subcontract and may enter upon the premises and take possession, for the purpose of completing the work comprehended under this Subcontract, of all materials, tools and appliances thereon, and employ any other person or persons to finish the work, and provide the materials therefor; and in any such case of such termination of Subcontract or discontinuance of the employment, Subcontractor shall not be entitled to receive any further payment under this Subcontract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in finishing the work and all other charge, expense or damage, such excess shall be paid by Contractor to Subcontractor; but if such expense and damage shall exceed such unpaid balance, Subcontractor shall pay the difference to Contractor.

ARTICLE 14. (a) ARBITRATION. In the event of any disagreement arising under this Subcontract, it shall, upon written notice of either to the other party, be submitted to three arbitrators for decision. Each party shall choose one arbitrator within ten days after receipt of such notice, the third to be chosen within ten days by the two thus selected. However, if within the time stipulated the two arbitrators appointed by the parties do not agree upon a third or a party who has been notified of a disagreement fails to appoint an arbitrator, then a third arbitrator or an arbitrator to represent the party in default, or both such arbitrators, may upon petition of either party be appointed by a Judge of a Court of general jurisdiction where the work is performed. The

decision of a majority of said arbitrators shall be final and binding upon both parties to this contract. Such arbitrators' decision shall be delivered to each party in writing on or before ten (10) days (or such further time as the arbitrators may fix) after the submission of any matter to them for their decision. Each party shall pay the cost and expense of the arbitrator it selects, but the cost and expense of the third arbitrator and the remainder of the expense of the arbitration shall be borne equally by the parties hereto. Arbitration proceedings shall not take place until after the completion or alleged completion of the work, except in a case where either party claims that the disagreement is of such nature as to make immediate arbitration proceedings necessary while the evidence is available. Without the consent of any interested insurance carrier, the foregoing provisions of this Article shall not require arbitration of any disagreements arising hereunder where any such disagreement has to do with any claimed liability of either party hereto which is protected in whole or in part by insurance.

(b) This entire agreement shall be and become a part of said purchase order by Contractor to Subcontractor as fully as though the terms hereof were written in said purchase order.

The foregoing agreement is binding upon the undersigned, their successors, executors, administrators and assigns.

IN WITNESS WHEREOF, the Parties have hereunto subscribed their names the day and year shown in said Purchase Order.

.....

By .....
Subcontractor

THE AUSTIN COMPANY

By (illegible)
Contractor

PLAINTIFF'S EXHIBIT 3

FROM

THE AUSTIN COMPANY
450 W. First Ave.
Roselle, New Jersey 07203

PURCHASE ORDER No. 1012-27

On Each Package and Invoice

Name of Job
Norwegian Christian
Home for the Aged, Inc.

CHARGE TO or
Work Order No. 70-1012

Date of Delivery
Attn: Mr. Frank Hudkik,
Pres.
Tele: 212-LW-4-2630

Date of Order January 14, 1972

NAME of
VENDOR Hudik-Ross Co., Inc.

Address 251 West 42nd Street, New York, N.Y. 10036

Deliver or Ship to The Austin Company
1255 Ovington Avenue
Brooklyn, New York.

Care of Norwegian Christian Home for the Aged, Inc.
Via Railroad or Truck TERMS—

PLEASE FURNISH SUBJECT TO CONDITIONS BELOW:

PURCHASE ORDER AND SUBCONTRACT

Furnish all necessary labor, mechanics, tools equipment and materials required for furnishing and installing complete the Heating, Ventilation and Air Conditioning work for the building we are constructing for the Norwegian Christian Home for the Aged, Inc., Brooklyn, New York in strict accordance with the Austin Company Drawings 70-1012 sheets 201 to 208 inclusive all revised 1/7/72, Specification 200, Heating, Ventilation and Air Conditioning, Pages i, ii, iii, 200-1 to 200-65 inclusive all dated 11/19/71, addendum No. 1. Pages 200—addl 1 to 200—addl 16 inclusive all dated 11/20/71.

The following allied specification, indicating equipment furnished and delivered by others for installation by this sub-contractor are incorporated into this subcontract:

A. Specification 201 — Room Heating and Air Conditioning Units, Pages 201-1 to 201-6 inclusive all dated 11/29/71.

B. Specification 202 — Cooling Tower, Pages 202-1 to 202-3 inclusive all dated 11/9/71.

C. Specification 203 — Self Contained Air Conditioning Units, Pages 203-1 to 203-5 inclusive all dated 11/30/71.

D. Specification 204 — Hot Water Generators, Pages 204-1 to 204-6 inclusive all dated 10/15/71 and addendum No. 1 Add—1-1 and Add 1-2 both dated 11/9/71.

E. Specification 205 — Evaporative Coolers, Pages 205-1 to 205-4 inclusive all dated 10/15/71. Addendum No. 1 add —1-1 dated 12/17/71.

F. Specification 206 — 10,000 Gallon Fuel Oil Tank, Pages 206-1 and 206-2, and Sketch 206-2.

G. Specification 207 — Heating and Ventilating Units, Pages 207-1 to 207-5 inclusive all dated 11/30/71.

The above stated drawings and specifications initiated by both parties signing this subcontract are to be considered as subcontract drawings and specifications.

Not included in the scope of this work are the following items:

A. Excavation and backfill.

B. Furnish and install linen chute.

C. Electrical Work

D. Furnish and install stack for Hot Water Generator.

E. Sales and Use Tax.

The hand written objections, Pages 1 and 2 affixed to this purchase order and subcontract, is included and becomes part of the subcontract documents.

Included in the amount noted in Article Two of the subcontract are the various changes as discussed on January 7th 1972 at the time the Letter of Intent was signed by representatives of both The Austin Company and Hudik Ross Co., Inc.

In accordance with the Austin Company Letter of Intent dated January 7, 1972, a copy of the Slant Fin Commercial Division Letter of January 13, 1972 addressed to the Austin Company stating the Guarantee as requested by this subcontractor is affixed to this purchase order and subcontract. This document is incorporated into and becomes part of this purchase order and subcontract. The Honeywell recommended Climate Command Control System attached hereto (noted in Slant Fin Letter of January 13, 1972) is also included as part of the subcontract documents.

Terms of Payment: Per Article Two of this Subcontract. Equal Employment Opportunity Clause attached hereto

is incorporated into and becomes part of this Purchase Order and Subcontract.

This subcontractor agrees to comply with all safety and health standards as required by the Williams-Steiger Occupational Safety & Health Act.

The attached conditions and General Requirements of the Purchase Order shall be incorporated into and become part of this Purchase Order and Subcontract.

In the event that The Austin Company authorizes this subcontractor to perform additional work on a Time and Material basis the following shall apply:

> Actual cost of Material, Equipment and Labor includes Insurance, Taxes and Fringe Benefits plus 10% for overhead and 10% for profit.

Tax Exemption Certificate is affixed to this purchase order and subcontract.

HES/emk

The following Conditions form a part of this Order:

1 SHIPPING NOTICE—shall be mailed as soon as Material has been forwarded, giving Order Number, Car Number and Initials, also condensed description of Material otherwise Vendor is liable to demurrage.

2 INVOICE IN TRIPLICATE. To mailing address above.

3 CAR LOADS—shall be loaded to minimum capacity—if not, the Vendor agrees to pay the excess freight.

4 PATENTS—Vendor agrees to protect and hold harmless Purchaser and Owner from and against all and every demand or demands of any nature or kind by reason of the use of any patented invention, article or appliance, that has been or may be adopted or used in the construction of any of the Material or Articles called for on this Purchase Order.

5 CARTAGE OR PACKAGES—no charges will be allowed for either.

6 INSURANCE—It is understood that Vendor will carry Public Liability, Workmen's Compensation and Property Damage or other necessary insurance and agrees to protect and indemnify The Austin Company against all claims for damages, lawsuits, etc. which may arise in connection with the fulfillment of this Purchase Order. Any limitation of the liability or responsi-

bility of Vendor by provisions of Vendor's delivery tickets or other instruments, shall be entirely ineffective.

7 It is agreed that goods or services furnished under this Purchase Order shall comply with all Federal, State and other laws applying thereto.

/s/ H. E. Stillwell
H. E. STILLWELL,
Proj. Purch. Agt.

PURCHASING AGENT

DISTRICT PURCHASING

FROM
THE AUSTIN COMPANY

PURCHASE ORDER No. 1012-23A
On Each Package and Invoice

Name of Job
Norwegian Christian
Home for the Aged, Inc.

CHARGE TO or
Work Order No. 70-1012
Date of Delivery

Date of Order March 22, 1972

NAME of
VENDOR MECHANICAL SALES CORP.

Address P.O. Box 321, Passaic, New Jersey 07055
Deliver or Ship to

The Austin Company, 1250 - 67th Street, Brooklyn, New York

Care of Norwegian Christian Home for the Aged, Inc.
Via Railroad or Truck TERMS—

PLEASE FURNISH SUBJECT TO CONDITIONS BELOW:

PLAINTIFF'S EXHIBIT 5

CHANGE ORDER "A"

Refer to our original Purchase Order No. 1012-23 dated January 4, 1972 and make the following changes:

1. Change name of Vendor to:

SLANT/FIN CORPORATION
c/o Mechanical Sales Corp.
P.O. Box 321
Passaic, New Jersey 07055

2. Delete the furnishing and delivery of Stamped Aluminum Exterior Grilles (114), Wall Boxes (114), and Baked Enamel Finish for Exterior Grilles.

PRICE ..... $741.00 (CREDIT)
This Change Order shall be incorporated into and become part of our original Purchase Order No. 1012-23 dated January 4, 1972. All other terms and conditions shall remain the same except as detailed herein.

The following Conditions form a part of this Order:

1 SHIPPING NOTICE—shall be mailed as soon as Material has been forwarded, giving Order Number, Car Number and Initials, also condensed description of Material otherwise Vendor is liable to demurrage.

2 INVOICE IN TRIPLICATE. To mailing address above.

3 CAR LOADS—shall be loaded to minimum capacity—if not, the Vendor agrees to pay the excess freight.

4 PATENTS—Vendor agrees to protect and hold harmless Purchaser and Owner from and against all and every demand or demands of any nature or kind by reason of the use of any patented invention, article or appliance, that has been or may be adopted or used in the construction of any of the Material or Articles called for on this Purchase Order.

5 CARTAGE OR PACKAGES—no charges will be allowed for either.

6 INSURANCE—It is understood that Vendor will carry Public Liability, Workmen's Compensation and Property Damage or other necessary insurance and agrees to protect and indemnify The Austin Company against all claims for damages, lawsuits, etc. which may arise in connection with the fulfillment of this Purchase Order. Any limitation of the liability or responsibility of Vendor by provisions of Vendor's delivery tickets or other instruments, shall be entirely ineffective.

7 It is agreed that goods or services furnished under this Purchase Order shall comply with all Federal, State and other laws applying thereto.

W. M. BOGOCKI

PURCHASING AGENT

DISTRICT PURCHASING

FROM
THE AUSTIN COMPANY

PURCHASE ORDER No. 1012-23
On Each Package and Invoice

Name of Job
Norwegian Christian
Home for the Aged, Inc.

CHARGE TO or
Work Order No. 70-1012
Date of Delivery
Attn: Sam Jaffe
Tele: 773-7040

Date of Order January 4, 1972

NAME of
VENDOR Mechanical Sales Corp.

Address P.O. Box 321, Passaic, New Jersey 07055

Deliver or Ship to

The Austin Company
1250 - 67th Street, Brooklyn, New York

Care of

The Norwegian Christian Home for the Aged, Inc.
Via Railroad or Truck TERMS—

PLEASE FURNISH SUBJECT TO CONDITIONS BELOW:

PURCHASE ORDER

Furnish and deliver all of the required room heating and air conditioning units as shown and called for on the Austin Company Specifications 201-1 to 201-6 dated November 29, 1971, and The Austin Company Drawing number 204 revised November 20, 1971.

The above revised drawing and specifications are now all in your possession.

The Mechanical Sales Corporation quotation number SF107-471 dated December 13, 1971 is incorporated into and becomes part of this Purchase Order.

Fifty four (54) Slant/Fin Climate Command WC9—unit "B"

Fifty (50) Slant/Fin Climate Command WC12—unit "C"

Ten (10) Slant/Fin Climate Command WC16—unit "D"

All the above for the sum of $51,100.00

Include Painted baked enamel exterior louver to match exterior of building, add the sum of ..... $ 285.00

Include Insulated pipe cove moulding, add the sum of ..... $ 3,712.00

TOTAL AMOUNT OF THIS PURCHASE ORDER $55,097.00

The prices stipulated above includes the following:

Freight

Fresh air intake with aluminum louver, natural color

Motorized damper door with on-off switch

Pipe cove (uninsulated) moulding with accessories

Seven (7) master control units with eleven (11) slaves, including wall mounted thermostat and automatic changeover control

Special N.Y.C. code electrical plug in recepticles and prewired

Five (5) year compressor warranty

Factory assembled and prepiped units with gate valves for mono-flow series loop installation

Self-contained thermostats and push button control board

It is agreed that you shall submit in triplicate to the Austin Company, 450 W. First Avenue, Roselle, New Jersey—07203, three (3) copies of shop drawings and engineering data for formal approval by the Austin Company within three weeks from date of this Purchase Order.

Shipment shall be made complete within 8 to 11 weeks after date of receipt of approval of the shop drawings. This purchase is exempt from Sales and Use Tax. Attached hereto is a copy of the Tax Organization Certificate.

The following Conditions form a part of this Order:

1 SHIPPING NOTICE—shall be mailed as soon as Material has been forwarded, giving Order Number, Car Number and Initials, also condensed description of Material otherwise Vendor is liable to demurrage.

2 INVOICE IN TRIPLICATE. To mailing address above.

3 CAR LOADS—shall be loaded to minimum capacity—if not, the Vendor agrees to pay the excess freight.

4 PATENTS—Vendor agrees to protect and hold harmless Purchaser and Owner from and against all and every demand or demands of any nature or kind by reason of the use of any patented invention, article or appliance, that has been or may be adopted or used in the construction of any of the Material or Articles called for on this Purchase Order.

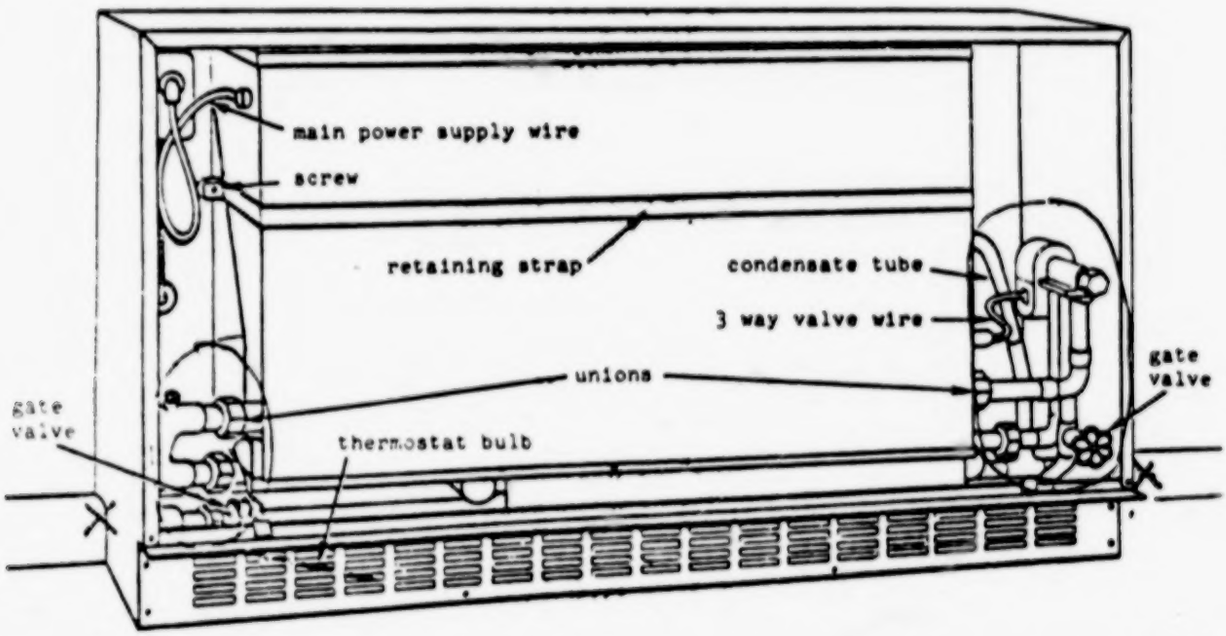
5 CARTAGE OR PACKAGES—no charges will be allowed for either.

6 INSURANCE—It is understood that Vendor will carry Public Liability, Workmen's Compensation and Property Damage or other necessary insurance and agrees to protect and indemnify The Austin Company against all claims for damages, lawsuits, etc. which may arise in connection with the fulfillment of this Purchase Order. Any limitation of the liability or responsibility of Vendor by provisions of Vendor's delivery tickets or other instruments, shall be entirely ineffective.

7 It is agreed that goods or services furnished under this Purchase Order shall comply with all Federal, State and other laws applying thereto.

/s/ H. E. Stillwell
H. E. STILLWELL,
Purch. Agt.

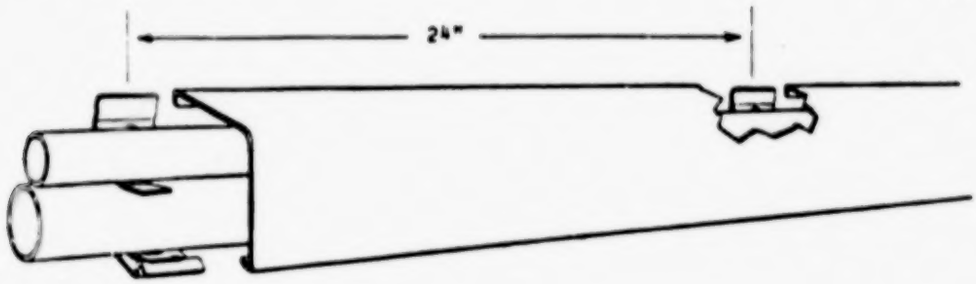
PURCHASING AGENT



If desired, the entire air conditioning chassis may be removed from the cabinet. Shut water off by closing gate valves at each end of unit. Remove 2 screws and retaining strap, disconnect 2 unions, disconnect rubber condensate tube, unplug wire from 3-way valve, unplug main power supply wire, unclip thermostat bulb and push into recess under chassis. Air conditioning chassis is now free to slide out of cabinet.

Connect electrical cable to receptacle in handy box inside cabinet. If air conditioning chassis was removed for installation, reinstall by reversing steps outlined above.

ALONG-WALL PIPING: 1 1/4" supply tubing and 3/4" condensate line may be concealed within prefabricated pipe-cove molding (available in 5' lengths only).



Mount brackets on 2' centers (3 per 5' length). Rest bottom of bracket on finished floor line; use spacers if working on sub-flooring. Rest 1 1/4" supply tubing on lower arm of bracket; install 3/4" condensate line on upper arm of bracket. Install balancing valve at beginning or end of each loop, and install flow meter fitting (B & G Thermoflo, Taco #737, or similar) in each loop, to permit accurate balancing after installation is complete. After

X X X

PLAINTIFF'S EXHIBIT 8

CONSTRUCTION PROGRESS MEETING NO. 12
W. O. 70-1012

BROOKLYN, NEW YORK

NORWEGIAN CHRISTIAN HOME

A meeting was held on the job site on Thursday, 6/29/72

PRESENT:

Mr. A. Churson—Hudik-Ross, Inc.

Mr. A. J. Desiderio—A. J. Desiderio, Inc.

Mr. R. S. Grand—The Austin Company
Mr. P. D. Plath—The Austin Company
Mr. J. Puchalski—The Austin Company

DISCUSSION:

ELECTRICAL—P & T ELECTRIC COMPANY, INC.

1) Manpower—1 + 9
2) Percentage complete—50
3) Purchasing
   a) Motor Control Center & Switchboard—ITE—MCC back boxes on job—MCC panels delivered 6/12—Switchboard—has slipped—originally not delivered on 6/23 as promised—EXPEDITE
   b) Nurses Call System, Paging and TV System—Roughing material is in stock—fabrication of balance of order to be completed by 6/22—P & T to confirm if this is complete
   c) Fire Alarm, Smoke Detector and Door Release Systems—All materials and equipment are in stock.
   d) Light Fixtures—major items are in stock—remainder are being fabricated—no delivery problems—fixture schedule was mailed to Austin week of 6/5

Construction

a) Basement Slab Conduits—95% complete—balance consists of work in the Electrical Equipment Room—This work is proceeding very slowly—P & T will concentrate on this item—need minimum of one week to complete

b) Switchgear—estimate one week to install and two to three weeks for Con Edison to complete service hook-up—P & T may be able to get a temporary hook-up if the permanent hook-up is too late—The ITE equipment will be required for a temporary hook-up.

c) Conduit in dry wall—estimate 3 days/floor—more men will be added in order to maintain this schedule.

PLUMBING—A. J. DESIDERIO, INC.

1) Manpower—1 + 12—workforce will be reduced by 2 on 6/30—Union Agreement expires end of July 1972

2) Percentage complete—45%

a) Fire Hose Cabinets—being installed

b) Kitchen Equipment—a coordination meeting will have to be held to clear up questions on roughing and installation—to be set up for week of July 3rd.

c) Sanitary risers—complete through roof

d) Water risers—all risers are completed with the exception of P-9—to be completed by July 6th.

e) Insulation—3 men on job—expecting strike on July 1st.

f) Basement Cast Iron—complete except for kitchen connections.

g) Street Connections—started 6/26—work is proceeding slowly—A.J.D. to expedite.

H.V.A.C.—HUDIK-ROSS, INC.

1) Manpower—Sheet metal workers—2, Pipefitter—1 + 6—Austin feels that a minimum of 12 pipefitters are required on the job. H. R. stated that they have sufficient manpower at this time

2) Percentage complete—40

a) Fuel Oil Tank—Approval to proceed was mailed to H. R. on 5/26—estimate 3 days to install piping. H. R. will coredrill necessary holes in the basement walls—This work to be completed week of July 3rd

b) Slant Fin Units (114)—by Austin—on job hook-up of same being handled by F. Hudik—Steamfitters Union states that they will not hook up same as they are preassembled

c) Roof fans—by Hudik-Ross—no delivery dates—H. R. to inform Austin of delivery dates by July 6th

d) Cooling Tower and Evaporative Cooler—by Austin—Baltimore Air Coil. Rigged on roof on 6/5—no work has been done on these units to date.

e) Sheetmetal—all S.D. have been approved with the exception of the 5th floor and the Mechanical Equipment Room, and have been released for fabrication. Suna Sheetmetal to resubmit S.D. on ductwork in Central Wash Areas—H-R will submit S.D. to Austin by 7/7 on future in the Mechanical Equipment Room—This area is still on hold because of this item

f) Emergency Generator Exhaust Stack—H-R stated that this is not included in their contract—request for extra sent to Austin on 6/26—PURCHASING PLEASE NOTE

g) Automatic Controls—D.D. returned approved to H-R on 6/27—type of valves are still in question—J. Puchalski to advise

h) Starters for Equipment—H.R. questioned location of same

i) Construction Schedule—H.R. will send a copy of their schedule to the job and to Austin/Roselle week of 7/3

FIRE PROTECTION

GOULD AUTOMATIC SPRINKLER

1) Manpower—2—back on job as of 6/27

2) Percentage complete—25%

a) Basement Piping—complete except for Mechanical Equipment Room which is on hold.

b) Shop Drawings—1st thru 4th floor are approved —5th floor S.D. will be completed by 7/7 providing coordination drawing is transmitted by A. J. Desiderio to Gould by 6/30

c) 1st Floor Piping—work started on 6/27—estimate 3 days to complete

d) Street Connections—to start week of 7/3—estimate one week to complete

P. D. Plath
Project Superintendent

cc:

All Present
V. Napoli
A. Churson
A. Desiderio
C. Ottman
H. Stenger
P. Plath
J. Bennett
K. Rumzie
H. Bandtlow
D. MacDonald
G. Ernst
S. Schaeffer
R. Grand

PLAINTIFF'S EXHIBIT 9

ENTERPRISE ASSOCIATION — LOCAL UNION 638

WORKING AGREEMENT

Effective July 11, 1966 Terminates June 30, 1969

This WORKING AGREEMENT made and entered into this ..... day of ....., 196..., by and between ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPE FITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (hereinafter referred to as ENTERPRISE, 841 Broadway, New York City, N.Y.), and HUDIK-ROSS CO., INC. [Full Name of Employer—(If a partnership give names of all partners and firm name)] of 230 West 41st Street, New York, N.Y. 10036 [Business Address] (hereinafter referred to as the EMPLOYER),

WITNESSETH:

WHEREAS, ENTERPRISE is a Labor Union representing steamfitters and apprentices engaged in the steamfitting trade and its allied branches in the area comprising the City of New York and Nassau and Suffolk Counties, State of New York; and

WHEREAS, the EMPLOYER has occasion to employ steamfitters and apprentices in connection with such work and desires to enter into an agreement with ENTERPRISE with respect to such employment and the terms and conditions governing the same;

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows:

ARTICLE ONE
WORKING RULES—WAGES AND HOURS

The parties agree that during the term of this agreement, the attached Rules, numbered "I" to "XXIV" inclusive, governing wages, hours, Welfare Fund, Pension Fund, Educational Fund, Vacation Plan, Security Fund, Industry Promotional Fund and other conditions of employment shall apply to the hiring and employment of all steamfitters and apprentices and shall be in full force and effect and constitute part of this agreement. The parties hereto agree to observe and enforce all of the terms and conditions contained in said Rules.

ARTICLE TWO
STRIKES OR LOCKOUTS

It is further mutually agreed that no strike against the EMPLOYER shall be ordered by any officer of or entered into by any member of ENTERPRISE, nor shall any lockout against members of ENTERPRISE be declared by the EMPLOYER, so long as this agreement and the rules hereto attached are conformed to by both parties.

ARTICLE THREE
JOINT ARBITRATION PLAN

It is further mutually agreed that both parties to this agreement shall abide by a Joint Arbitration Plan that may be agreed upon by the representatives of the several employers' associations and a majority of the unions of the building trades of New York City.

It is mutually agreed between the parties hereto that in event of disputes between trades, and disputes relative to question of jurisdiction of trade, the parties will abide by previous decisions as to jurisdiction published in the latest issue of the B.T.E.A. Handbook, commonly known as "The Green Book."

It is mutually agreed between the parties hereto that disputes between trades, and disputes relative to jurisdiction of trade not covered by decision in the latest

issue of the B.T.E.A. Handbook, commonly known as "The Green Book," shall be adjusted in accordance with the principles of the New York Plan for the Settlement of Jurisdictional Disputes as set forth in the Joint Arbitration Plan of the New York Building Trades as adopted on July 9, 1903 and amended on April 22, 1905, and as thereafter amended, except to the extent that Section 3 of the said Joint Arbitration Plan requires the employer to employ only members of the union directly or indirectly through subcontractors or otherwise.

Pending determination of any dispute under the New York Plan for the settlement of jurisdictional disputes as stated in the preceding paragraph the members of the union shall remain at work on the project without change in status.

ARTICLE FOUR
TERM OF THIS AGREEMENT

It is further mutually agreed that no change in this agreement shall be asked for by either party hereto, to take effect prior to the first day of July, 1969.

ARTICLE FIVE

It is understood and agreed that this agreement is based upon the Principles for Trade Agreements as set forth in the printed annex to this agreement, and nothing in the Rules of the Enterprise Association attached hereto, or within this agreement shall be interpreted to contradict or nullify any of the said Principles.

It is understood and agreed that in case any provision of this agreement shall be found to be contrary to law, such finding shall not in any way affect the other provisions of this agreement, which shall, notwithstanding, continue in full force and effect.

In the event of change of applicable Federal laws affecting this agreement, by virtue of which change it shall become legal for the Enterprise Association to demand that only members of Enterprise Association be employed in the performance of work under its jurisdiction, or to

institute what is commonly known as the "closed shop," the Employer agrees that in such event and on the giving of ten (10) days' notice to the Employer by Enterprise Association in writing by registered mail, this agreement shall be deemed amended to the end that on and after the conclusion of the said ten (10) days period only members of the Enterprise Association shall be employed by the Employer in the performance of work coming within the jurisdiction of Enterprise Association and only members of the Metal Trades Branch of Local Union 638 shall be employed in the performance of service work more particularly described in Rule XVI of this agreement.

ARTICLE SIX

This agreement shall supersede and replace all previous agreements entered into between ENTERPRISE and the EMPLOYER, upon the understanding that the EMPLOYER shall continue to be responsible for any moneys heretofore payable with respect to the Pension Fund, Welfare Fund, Educational Fund, Vacation Plan and the Security Fund.

IN WITNESS THEREOF, this agreement has been signed by a duly authorized officer of ENTERPRISE and the EMPLOYER the day and year first above written.

ENTERPRISE ASSOCIATION, LOCAL UNION 638

By /s/ John J. Tracey
Business Agent-at-Large
Hudik-Ross Co., Inc.

By /s/ Frank Hudik
Employer

Date Signed 3-14-67
(Full Individual, Firm or Corporate Name)

Business Agent .....

Address: .....

RULES

Rules of the Enterprise Association applying to work at the steamfitting trade and its many branches, in the City of New York and in Nassau and Suffolk Counties, New York.

RULE I

WORKING DAY

SECTION 1. The hours of labor shall be seven (7) hours per day, to be performed between the hours of eight (8:00) o'clock A.M. and four (4:00) o'clock P.M., as designated by the employer, every day except Saturday, Sunday and legal holidays.

SECTION 2. No steamfitter or apprentice shall be allowed to apply to any shop or office for employment except between the hours of eight (8:00) o'clock A.M. and four (4:00) o'clock P.M.

SECTION 3. If a steamfitter is employed on Temporary Heat, the twenty-four hour day shall be divided into three (3) shifts of eight (8) hours each. One or more of these shifts may be used.

SECTION 4. Each shift shall be known as the working day for temporary heat, every day including Saturday, Sunday and legal holidays.

SECTION 5. The working days above named shall be known as regular time and shall be time actually employed at work.

* * * *

RULE V

MEN TO WORK IN UNITS OF TWO

All work to be performed within the jurisdiction of Enterprise Association must be performed by journeymen steamfitters or apprentices working in units of two,

one of whom must be a steamfitter. A unit shall be composed of:

A. Steamfitter with a steamfitter, or

B. Steamfitter with an apprentice.

RULE VI

WHERE STEAMFITTERS AND APPRENTICES ARE TO BE AT 8:00 O'CLOCK A.M.

Each steamfitter and apprentice shall be paid from the time at which he arrives at his work within the territory of Greater New York and all of Long Island and there shall be no board or carfare paid to steamfitters or apprentices working in said territory.

A steamfitter who is sent to work outside of the above noted territory shall take the boat, train or car leaving either of the extreme points of the territory, as directed by his employer, going on boat, train or car leaving nearest eight (8:00) o'clock A.M. and returning take the boat, train or car arriving nearest four (4:00) o'clock P.M.

RULE VII

EXPENSES ALLOWED TO STEAMFITTERS

Each steamfitter working outside of the limits described in Rule No. VI shall receive from his employer traveling expenses to and from the place at which the work is located for as many trips as he is directed by his employer to make. He shall also receive a reasonable amount of board paid by him and he shall receive regular wages for all regular time consumed in traveling.

If the steamfitter leaves his work before it is completed and without the consent of his employer, it shall be at his own time and expense.

RULE VIII

In going from his shop to his work, or from his work to the shop, a distance of more than one (1) mile, each

steamfitter or apprentice shall receive from his employer the necessary fare.

RULE IX

CUTTING PIPE AND MAKING UP FITTINGS

Pipe up to and including four inches (4") diameter, with the exception of sprinkler work, radiator branches, convector branches and coil connections shall be cut, threaded and have fittings screwed on by hand or machine either on the job or in the shop of the direct employer at the option of the employer. If the pipe is cut and threaded on the job the work shall be done in accordance with Rule V.

If the pipe is cut, threaded and fittings are screwed on in the shop of the direct employer and said shop is equipped with permanently installed pipe cutting and threading machinery and it has been the practice of the employer to cut and thread pipe and screw on fittings in said shop, then the work shall be done by a steamfitter working alone. When a direct employer who has had no permanently installed pipe cutting machinery in his shop desires to do this work in his shop, such work shall be done in accordance with Rule V.

Radiator branches, convector branches and coil connections shall be cut and threaded by hand on the job in accordance with Rule V.

All fittings on sprinkler work five inches (5") and under shall be made up according to Rule V.

All pipe used for temporary radiator connections having been cut by hand on the job and returned to the shop may be used again.

RULE X

WELDING

Acetylene, electric or other forms of cutting or welding shall be done either in the shop or on the job of the direct employer at the option of the employer.

If welding is done in the shop of the direct employer, the work shall be done by a steamfitter working alone. All welding work done on the job shall be done in accordance with Rule V.

The fabrication of van stone joints, the making of hammer welds, or the welding of boiler headers, street steam headers, circular coils, trombone coils, zigzag coils, trunk coils, double pipe refrigerating machine coils, atmospheric type condensers, absorbers, weak liquor coolers and rectifiers of refrigerating machines may be done by the employer without reference to any jurisdiction by Enterprise Association. All other pipe welding is to be performed by journeymen steamfitters.

RULE XI

TEMPORARY HEAT

SECTION 1. Steamfitters working alone shall have jurisdiction in the operation and/or maintenance of all temporary heat work at all times whenever temporary heat is on a building regardless of the source of heat supply. If the fire is banked or if no heat is in the radiators, steamfitters shall have no claim for temporary heat operation and/or maintenance. Steamfitters shall have no claim for temporary heat operation and/or maintenance in any building or structure or addition thereto that will have a total of 1,500 sq. ft. of radiation or less, exclusive of mains and risers installed in said building or structure or addition thereto when completed.

* * * *

PLAINTIFF'S EXHIBIT 10

INTERIM AGREEMENT

IT IS AGREED AND UNDERSTOOD, by and between the undersigned Employer and ENTERPRISE ASSOCIATION, STEAMFITTERS LOCAL 638, hereinafter referred to as the Union, that

1. Except as specifically modified herein the agreement between the Employer and the Union which expired on June 30, 1972 shall be extended for an additional period of one year and shall terminate on June 30, 1973.

2. Rule XXIV (Industry Promotion Fund) and Rule XXV (Urban Affairs Fund) shall be deleted.

3. Rules II, III, IX, X, XI, XVII and XXIII shall be modified as follows:

(A). Rule II (Rate of Wages)

From July 1, 1972 to June 30, 1973 inclusive the hourly wage rate of $8.115 shall be increased by .685¢ per hour. This sum of .685¢ per hour shall be deposited weekly in an escrow bank account opened and maintained by the Employer in the Employer's name as Escrowee, to be paid to Steamfitters and/or Apprentices and to the Steamfitters Local 638 fringe benefit funds when the increase is approved by the Construction Industry Stabilization Committee. The bank book showing such deposits and all supporting data shall be furnished to the Union from time to time on the Unions request. In the event the full increase is not approved in its entirety so much as is approved shall be disbursed by the Employer out of the escrow account at the Union's request and the parties shall renegotiate the wage increase at the discretion of the Union.

The Union shall have the right to allocate the wage increase among the wage rate and the Steamfitters Local 638 fringe benefit funds.

Section III shall read as follows:

"Section III. Apprentices shall be paid a progressively increased schedule of wages for five years based on the following percentages of the wage rate payable to journeymen steamfitters, and subject to the provisions of Rule XX with respect to payments to Apprentices for attendance at classes:

1st half of 1st year 40% of a journeyman steamfitter's rate of wage

2nd half of 1st year 45% of a journeyman steamfitter's rate of wage
1st half of 2nd year 50% of a journeyman steamfitter's rate of wage
2nd half of 2nd year 55% of a journeyman steamfitter's rate of wage
1st half of 3rd year 60% of a journeyman steamfitter's rate of wage
2nd half of 3rd year 65% of a journeyman steamfitter's rate of wage
1st half of 4th year 70% of a journeyman steamfitter's rate of wage
2nd half of 4th year 75% of a journeyman steamfitter's rate of wage
5th year 85% of a journeyman steamfitter's rate of wage

In addition to the hourly rates above, contributions to the Welfare, Pension and Vacation Funds shall be made at the same percentage of Fund payments for Steamfitters as the percentage of wages. The other Funds shall be at the same rate as for Steamfitters."

As so modified Rule II shall continue in effect for the period of this Agreement.

(B) Rule III (Rate for Overtime and Holidays)

A new Section III shall be added: There shall be no overtime worked unless consented to by the Union.

(C) Rule IX (Cutting Pipe and Making Up Fittings)

New paragraphs shall be added to Rule IX reading as follows:

"All pipe which is cut, threaded, grooved or has fittings made up in the shop must be labeled before leaving the shop. Labels shall be obtained by the employer by written application to the Union. Labels shall bear, both the Employer's and Employees' names before the label is affixed. Unlabeled work shall not be installed.

All Pipe hangers, except sprinkler work made of manufactured and, or fabricated components, shall be assembled and erected on the job in accordance with Rule V. Sprinkler hangers shall be assembled on the job or in the shop of the direct employer.

All hanger rods shall be cut on the job or in the shop of the direct employer.

The erection of all hangers, supports, stands and structural attachments for work covered by this agreement is the work of steamfitter and/or apprentice working in the geographic jurisdiction of the Union."

As so modified Rule IX shall continue in effect for the period of this Agreement.

(D) Rule X (Welding)

A new paragraph shall be added to Rule X reading as follows:

"All pipe fabrication performed in a shop must be labeled before leaving the shop. Labels shall be obtained by the Employers by written application to the Union, and labels shall bear the employers and employees names before use. Unlabeled work shall not be installed."

As so modified Rule X shall continue in effect for the period of this Agreement.

(E) Rule XI (Temporary Heat)

It is specifically understood that the within Rule XI shall also apply to air conditioning and all references to temporary heat shall be deemed to apply to air conditioning as if the same were set forth at length in this Rule.

(F) Rule XII (Care of Tools)

The within Rule XII shall be rewritten so as to substitute the following language for the priod language in Rule XII:

"RULE XII. TOOLS AND SHANTIES

Section I. The Employer shall provide all necessary tools required for the fitter to perform the work. The fitter shall comply with all Employer rules and regulations in the use and care of these tools, and promptly report any that are missing, destroyed or in need of repair.

Section II. The Employer shall provide suitable shanties and dressing facilities on all jobs. These

shall be heated during winter months. Where these are prefabricated for job assembly, they shall be assembled by fitters.

Section III. In the event an employee's working clothes are destroyed by fire during other than working hours, the Employer shall compensate the employee for the replacement of these articles, but in no event shall the amount for replacement exceed Fity Dollars ($50.00) per man. In the event personal property, including street or dress clothes of an employee, are destroyed due to fire, during working hours, the amount of damage shall be limited to Seventy-Five Dollars ($75.00)."

(G) Rule XVII (Job Stewards)

The within Rule XVII shall be rewritten so as to substitute the following language for the prior language in Rule XVII:

"RULE XVII—JOB STEWARDS

Where the Employer employs four (4) or more units (as defined in Rule V) of Enterprise Association members on a job, then the members of Enterprise Association on the job shall select from one of such units a Job Steward, who shall be a working steamfitter and who shall act in behalf of the interests of the Union and whose duties shall not interfere with the work he is employed to perform by his Employer.

When the Employer of a Job Steward has four (4) or more units working overtime on the job where the Job Steward is employed, the Job Steward and his partner shall be included in one of the units working overtime.

The steamfitter in charge shall be the Shop Steward whenever less than four (4) units are employed on the job.

The Employer agrees not to discriminate in any way against any person so designated as Job Steward, either due to his being designated or to his activities in behalf of Enterprise Association and its members."

(H) Rule XXIII (Surety Company Bond)

The within Rule XXIII shall be rewritten so as to substitute the following language for the prior language in Rule XXIII:

"RULE XXIII. BONDING AND FUND PAYMENT REQUIREMENTS AND ADMINISTRATION

Section I. Each Employer shall furnish a bond to the joint benefit of the Trustees of the Steamfitters' Industry Welfare Fund, the Steamfitters' Industry Pension Fund, the Steamfitters' Industry Educational Fund, the Steamfitters' Industry Vacation Plan, the Steamfitters' Industry Security Benefit Fund, guaranteeing payment to said Trustees, jointly and severally, of any and all amounts due from said Employer to each of all of said Funds or Plan, pursuant to the terms of this Agreement. Such bond shall be in form and substance satisfactory to the said Trustees, jointly.

The aggregate amount of the bond shall be determined by the following:

0 to 20	Local 638 Employees	$ 5,000.00
21 to 70	Local 638 Employees	$10,000.00
Over 70	Local 638 Employees	$30,000.00

Section II. Each Employer will make the required Fund payments provided for in this Agreement within fourteen (14) calendar days following the close of the work week, i.e., for a work week ending on Wednesday the Fund payments must be paid no later than the second following Wednesday except where Trustees have, in writing, authorized other terms.

Application for such less frequent payments should be made in writing by the Employer and shall, upon approval require a bond for double the amount required in Section I.

Reporting of Fund payments by employees name shall be submitted at the same time as payments.

Section IV. The Trustees may at any time direct a payroll audit of any Employer to verify the Fund payments.

The Trustees shall notify the appropriate Enterprise Association officials of all delinquent Employers for action as provided below. All Bonds furnished under this Rule shall provide for the payment of interest at 8% per annum on any delinquent Fund payments or wages in addition to the principal amount and shall also reimburse the Funds for the reasonable expense of collecting such delinquency. The Union may remove the men from a contractor who has been found delinquent in his Fund payments."

4. Where the prior agreement, which terminated on June 30, 1972 made references to the "Association" such references shall be modified or deleted insofar as they are inconsistent with the intention of the parties to enter into an agreement which is independent of and separate from any "Association" contract.

5. If an agreement is reached prior to June 30, 1973 by the Union with the Associations, this agreement shall terminate and the parties automatically be bound by the terms of such Association agreement and a full agreement embodying such terms shall be executed by the Employer and the Union. However, the wages due and payable and other conditions of employment as set forth in this Agreement shall not be affected for the periods in effect prior to the date of the Association contract.

6. The parties agree to incorporate this Agreement in a full contract if so requested by the Union.

For the Employer

/s/ [Illegible]
Hudik-Ross Co., Inc.
251 W. 42nd St.
NY, NY 10036
For The Enterprise
Association
Local 638

By /s/ John J. Tracey
Business Agent at Large

Dated July 1, 1972

DEFENDANT'S EXHIBIT B

ENTERPRISE ASSOCIATION

Of Steam, Hot Water, Hydraulic, Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning and General Pipe Fitters of New York and Vicinity

A.F.L.-C.I.O.

STEAMFITTERS LOCAL UNION 638
OF THE UNITED ASSOCIATION

[Union Label 285]

SECRETARY'S OFFICE
841 BROADWAY
New York, N.Y. 10003
Phone ORegon 4-3937

MEETS AT
ROOSEVELT AUDITORIUM
100 East 17th Street
New York City, N.Y.

The undersigned hereby agrees to continue in force the Working Agreement that expired on June 30, 1969 with the following modifications, it being understood that this Agreement will be continued until a more formal and detailed agreement is drawn and executed.

All the Articles and Rules enumerated in said Working Agreement are to remain the same except Rules II, (Wages), XXIII, (Surety Bond) and XXIV, (Industry Promotional Fund). A new Rule, XXV, (New York City Building and Construction Industry Board of Urban Affairs Fund) will be added.

From July 16, 1969 to December 31, 1969, inclusive, regular time for a steamfitter shall be paid for at the rate of $6.31 per hour plus 6% Welfare, 7% Pension, 9% Vacation, 50¢ per hour Security Benefit Fund, 3¢ per hour Educational Fund, 3¢ per hour Industry Promotional Fund and 1¢ per hour Industrial Board of Urban Affairs. (See Rules XVIII, XIX, XX, XXI, XXII, XXIV, and new Rule XXV).

Thereafter, from 1-1-70 to 7-1-70, inclusive, the Employer shall pay an additional 45¢ per hour to cover Wages and Fringe Benefits.

From 7-2-70 to 12-30-70, inclusive, the Employer shall pay an additional 50¢ per hour to cover Wages and fringe benefits.

From 12-31-70 to 6-30-71, inclusive, the Employer shall pay an additional 60¢ per hour to cover Wages and fringe benefits.

From 7-1-71 to 12-29-71, inclusive, the Employer shall pay an additional 65¢ per hour to cover Wages and fringe benefits.

From 12-30-71 to 6-30-72, inclusive, the Employer shall pay an additional 65¢ per hour to cover Wages and fringe benefits.

The usual percentage of the Steamfitter's Wage plus Fringe Benefits will be paid for the operation and/or maintenance of temporary heat and in the employment of Apprentices.

Rule XXIII is modified to require Employer to make Fringe Benefit payments within 14 days after they become due and if any Employer is delinquent in making these payments, he will be required to post a $10,000.00 bond; in addition, he will be required to pay a late charge at a rate of interest to be agreed upon by the parties hereto and such Employer will be required to produce his payroll records for an audit so that a verification of the correct amount due may be obtained.

Rule XXIV will be jointly administered when Federal Law so permits.

Rule XXV (new). A new Fund will become part of this agreement, said Fund to be known as the New York City Building and Construction Industry Board of Urban Affairs Fund.

The term of this agreement shall be three (3) years and no change will be asked by either party hereto, to take effect before July 1, 1972, except that from January 1, 1970 through the term of this agreement, the parties will agree to the allocation of the increases mentioned herein, all of which shall be incorporated in the more

formal agreement to be drawn and executed by the parties.

ENTERPRISE ASSOCIATION
LOCAL UNION 638

BY: /s/ Hudik-Ross Co., Inc.

/s/ John J. Tracey
B.A. at Large

/s/ [Illegible]
Employer

July 16, 1969

SUPREME COURT OF THE UNITED STATES

No. 75-777

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638, ETC.

ORDER ALLOWING CERTIORARI. Filed February 23, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 206293 247